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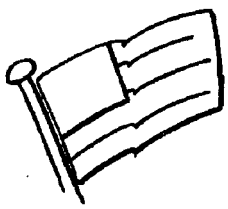

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Fighting Words

By Virginia I. Postrel

Does reading this make you a terrorist?

"Most greens can still consider themselves nonviolent for one reason: Their victims don't fight back. So far no one has taken up arms to defend his logging equipment against Earth First! sabotage or his factory against EPA closure....The 'debased human protoplasm' that [environmentalist writer Stephanie] Mills holds in contempt...will not go down nonviolently....And many ordinary human beings will not give up the right to own land without a fight, complete with guns."

I WROTE THAT IN APRIL 1990. IN APRIL 1995, it would have gotten me declared an enemy of the state, an inciter of violence, and for all intents and purposes the murderer of babies.

Which, in the eyes of E. J. Dionne of *The Washington Post* and Bill Clinton of 1600 Pennsylvania Avenue, I apparently am. After all, in REASON's May issue, which subscribers received in early April, I suggested that Americans are rightly afraid of government power, and I criticized Washingtonians for being too cool to use the word *tyranny* in polite conversation.

Back then, it was gauche to point out that Washington rules by force—that lawmakers' symbolic gestures, from drug laws to wetlands regulations to the Americans with Disabilities Act, are enforced by government agents backed by guns. It was gauche to suggest that many government actions are unjust. It was gauche to tell Washington that the rage of the powerless was building in the land.

Now it's not just gauche, it's criminal. It makes you a terrorist, guilty by association.

"Underlying fears that the United States government is a tyranny is an increasingly popular rhetorical style that economist Herbert Stein rightly criticized...as 'demagogic,'" writes Dionne in a post–Oklahoma City column.

"Only a handful of unfeeling fanatics take the rhetorical excesses of politics to deadly extremes," he continues. "But the fact that they have done so—and the fact that the potentially violent militias are growing—ought to lead to some soul-searching in the mainstream. After the suffering in Oklahoma City, the country needs an extended period in which political rhetoric is toned down, words are more carefully weighed and, as the president said yesterday, 'the purveyors of hate and division' and 'the promoters of paranoia' are resisted and condemned."

As the editor of a magazine devoted not only to liberty but to rational discourse, I'm happy to endorse weighing one's words carefully. But responsible rhetoric makes distinctions, and E. J. Dionne does not.

He jumps from mad bombers to "potentially violent" militia members to gun-control opponents to anyone who uses strong language to condemn tyrannical acts of the U.S. government. He lumps these disparate groups together with few distinctions and absolutely no attempt to understand the arguments or philosophy of his political opponents. E. J. Dionne is a purveyor of hate and division, a promoter of paranoia. And he is not alone.

In the column next to Dionne's, Richard Cohen writes in favor of disarming Americans in lieu of sacrificing other civil liberties to thwart terrorism: "Consider that the man linked to the bombing is also 'linked'—that most elastic of journalistic terms—to paramilitary groups that, in turn, are linked to one another. The pillar of their paranoia is the Second Amendment....These are stupid people, but because they are armed they are dangerous." Using "links," Cohen can go from Timothy McVeigh to militias to Republicans who want to repeal the assault weapon ban. All in 15 column inches.

A *Los Angeles Times* news report by Janet Hook is direct: "Gingrich has kept his distance from the violent extremes of the right....But Gingrich has continued to champion the same causes as these extremist groups: criticism of the Waco siege, opposition to gun control and general anti-government themes."

Congress shouldn't investigate Waco, says a May 9 *Times* editorial, because "given how large Waco looms in the mind of a violent fringe, this is not the time to pour salt into that wound." The *Times* rightly did not apply a similar standard of guilt by association to rioters and critics of the Rodney King beating.

OR CONSIDER *THE NEW REPUBLIC*'S ROBert Wright. In the same column in which he exhorts public figures to avoid appealing to the worst in human nature and saying untrue things, he writes that "McVeigh and his buddies are anti-tax, anti-regulation, anti-gun-control, anti-U.N." He thereby appeals to the worst in *New Republic* liberals by demonstrating that blowing up a building full of people is not very different from denouncing regulation. He then glibly refers to "the militia milieu that spawned McVeigh," although the McVeigh-militia connection appears to be this year's Big Lie.

It gets worse. Buried in a *Washington Post* article on "extremism" and the Internet is the sentence: "Jack Rickard, the editor and publisher of Boardwatch Magazine, said that out of about 65,000 on-line bulletin boards nationwide, he has heard of about 300 for libertarian and 'paranoid' groups." Our Washington editor, Rick Henderson, faxed me the article with the greeting: "Good morning, fellow paranoid/extremist." With all those "links" out

How to disappear off government computers

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The government has declared WAR on your privacy.

A friend of mine spent years building up his successful gold coin business. He was unpleasantly surprised one day by a visit from two IRS agents.

They complained that some of his customers were not paying taxes on their gold profits. They demanded detailed records of everything his clients bought. They wanted to know what type of cars they drove, if they wore expensive watches, and the addresses of girlfriends. The IRS also ordered him to secretly tape conversations with his clients, following IRS scripts.

My friend was outraged. The IRS' demands went far beyond the requirements of law and plain human decency. My friend told the IRS to get out of his offices.

Guns drawn, government agents took over his offices.

Nothing happened for four months. Then one morning my friend came to work to find his employees and customers held at gunpoint. Customers were ordered to leave; employees were told to cooperate. These government thugs proceeded to ransack my friend's offices.

Without charging him with any crime, they opened safes, confiscated his gold inventory, seized his business records, froze his bank accounts, and sealed his offices.

Every computer file was examined.

My friend was out of business, but that was only the beginning. Government experts poured over every file in his computers and located every asset he owned.

Three months later, the IRS informed my friend he had made mistakes on some of his IRS and SEC paperwork. These were technical violations of the law, minor paperwork errors anyone could easily make. But that didn't stop the IRS from seizing everything he owned.

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There's no way to come out of a confrontation like this with the government 100% unscathed. But if my friend had read my new book, *How to Keep the IRS and Other Snoops Out of Your Phone, Fax and Computer,* most of his assets would have remained anonymous and safe. And the IRS just wouldn't have had the information they needed to threaten him with criminal prosecution.

What happened to my friend in the gold business could easily happen to you. Government agents now operate with little regard for the law. The assets of thousands of innocent people are seized every week. But government agents aren't omnipotent. If they can't read your computer records, listen to your calls, or locate your assets are, they can't seize them.

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Editor Virginia I. Postrel

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Staff Reporter Ed Carson
Editorial Assistants Leigh Creighton, Mary Toledo

Art Director Barbara Burch

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Contributing Editors
Ronald Bailey, Edith Efron, Glenn Garvin, Steven Hayward, Thomas W. Hazlett, David R. Henderson, John Hood, Brink Lindsey, Carolyn Lochhead, Loren E. Lomasky, Jonathan Marshall, John McClaughry, Donald N. McCloskey, Michael McMenamin, Steven W. Mosher, Charles Oliver, Paul Craig Roberts, Jacob Sullum, Thomas Szasz, Walter E. Williams, Martin Morse Wooster, Cathy Young

Cartoonists
Chip Bok, Henry Payne, Scott Stantis

Volunteer Anthony Brown

Legal Adviser Don Erik Franzen

Editorial and Production Offices
3415 S. Sepulveda Blvd., Suite 400
Los Angeles, CA 90034-6064
310-391-2245 Fax: 310-391-4395

Washington Office
1001 Pennsylvania Ave., NW, Suite 200 South
Washington, DC 20004
202-457-8577 Fax: 202-457-8564

Advertising Sales
The Townsend Group, Inc.
5301 Wisconsin Avenue, NW, #730
Washington, DC 20015
202-362-9188 Fax: 202-686-9761

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Founding Editors
Manuel S. Klausner, Tibor R. Machan, Robert W. Poole Jr.

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there, how can we expect a responsible newspaper to distinguish between, say, Nobel Prize–winning economists and people who think the government has put microchips in their buttocks? After all, they're all suspicious of runaway government power.

And perhaps there *is* no difference between free market economists and conspiracy-obsessed terrorists. In a leap worthy of Evel Knievel, "Republican" commentator Kevin Phillips actually manages to jump from Oklahoma City to the flat tax. "The 'wacko' factor is intensifying," he writes in the *Los Angeles Times*. Tim McVeigh. Dick Armey. No difference.

IF PHILLIPS'S RHETORIC IS THE WEIRDEST, it is not the worst. Phillips has no power and, these days, little influence. The same cannot be said for Bill Clinton.

This is what the president of the United States said in a widely praised speech at Michigan State's graduation: "I would like to say something to the paramilitary groups and to others who believe the greatest threat to America comes not from terrorists from within our country or beyond our borders, but from our own government....I am well aware that most of you have never violated the law of the land. I welcome the comments that some of you have made recently condemning the bombing in Oklahoma City....*But I also know there have been lawbreakers among those who espouse your philosophy.*" (Emphasis added.)

"There have been lawbreakers among those who espouse your philosophy." Clinton may start with the "to be sures"—acknowledging that his nameless opponents are law-abiding and condemn the bombing—but he ends with guilt by association. Anyone who "believe[s] the greatest threat to America" comes from the government might as well be a terrorist. After all, they're on the same philosophical team.

Just who is purveying hate and division now? Just who is using wild words? Just who is paranoid, spinning out conspiracy theories built on blurring distinctions and imagining "links"?

Clinton continues: "Do people who work for the government sometimes make mistakes? Of course they do. They are human. Almost every American has some experience with this—a rude tax collector, an arbitrary regulator, an insensitive social worker, an abusive law officer. As long as human beings make up our government there will be mistakes....But there is no right to resort to violence when you don't get your way. There is no right to kill people. There is no right to kill people who are doing their duty, or minding their own business, or children who are innocent in every way. Those are the people who perished in Oklahoma City. And those who claim such rights are wrong and un-American."

First he makes an amazing declaration coming from an advocate of bigger government and the recipient of public-employee PAC money: "Almost every American" has had some experience with obnoxious, abusive government officials. By shifting the blame to individuals—it's those awful civil servants—he deflects criticism of the system. Don't question the law, he suggests, blame the enforcer.

He then cleverly moves the argument from whether government power is something to be feared—obviously not, since the problem is a few rotten workers—to whether violence against public employees is justified. Here, he lumps together "people who are doing their duty" (the Nuremberg defense), people who are "minding their own business," and "children who are innocent in every way."

It's not clear who advocates killing *any* of these people under current conditions. But at least in theory they are distinguishable. One can imagine circumstances under which self-defense might be justified against the first group; it's hard to conjure up rationales for attacking either of the other two. But Clinton's rhetorical mode is to blur distinctions.

And to smear by innuendo. By never specifying whom he is attacking—Who exactly claims the right to kill "children who are innocent in every way"? Who claims the right to kill "the people who perished in Oklahoma City"?—Clinton

manages to call all of his political opponents murderers and then say he didn't.

He accomplished the same thing with his vague attack on "loud and angry voices." Was he talking about all conservative and libertarian talk radio hosts? G. Gordon Liddy? Or just conspiracy theorists like "Mark from Michigan"? He was in fact smearing them all, but preserving his deniability.

AND HE DOES THIS OVER AND OVER again. Later in the MSU speech, he says to "all others who believe that the greatest threat to freedom comes from the government instead of from those who would take away our freedom [which, of course, begs the question]: If you say violence is an acceptable way to make change, you are wrong. If you say that government is in a conspiracy to take your freedom away, you are just plain wrong."

Is the issue violence? Conspiracy? Or the audacious claim that government power is a threat to freedom—perhaps, in the post–Cold War era, the greatest threat? Clinton sweeps them all together. Forty-five percent of Americans surveyed in late April told Times Mirror that they "think that the activities of the federal government pose a threat to the constitutional rights enjoyed by the average American." As far as Bill Clinton's rhetorical sleight of hand is concerned, 45 percent of Americans may just possibly advocate blowing up babies.

Clinton is sleazier, if less deft, when he speaks off the cuff. On *60 Minutes*, Mike Wallace asked whether the president had any second thoughts about the Waco raid. Clinton never really answered the question, but he did suggest that anyone who questions the government's actions is "making heroes" of the Branch Davidians.

And, he insinuated, raising such questions is tantamount to justifying the Oklahoma City bombing: "I cannot believe that any serious patriotic American believes that the conduct of those people at Waco justifies the kind of outrageous behavior we've seen here at Oklahoma City *or the kind of inflammatory rhetoric* that we're hearing all across this country today. It's wrong." (Emphasis added.) Asking that government agents be held responsible for their actions—actions that resulted in the deaths of scores of Americans—is, by association, equivalent to blowing up innocent people. Especially if you use "inflammatory rhetoric."

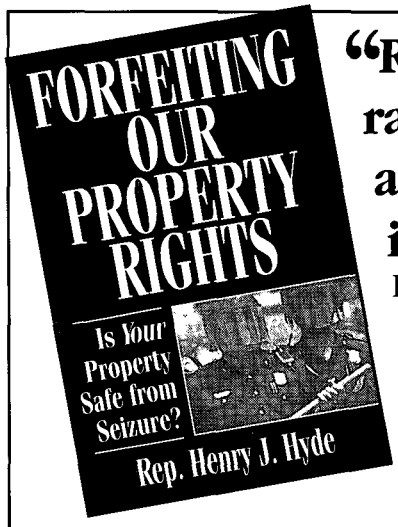
Many commentators have noted that Clinton can't tell the difference between talking and acting. They mean that he substitutes words for deeds, especially in foreign policy, and is shocked when his yammering has no effect.

In the wake of the Oklahoma City tragedy, we have seen a different side of that confusion—the deliberate conflation of his opponents' words with the deadly deeds of a handful of vicious, isolated individuals. Using tactics that would make Joe McCarthy sit up and take notes, Bill Clinton has sought to intimidate critics of government policy by branding them as terrorists.

Such tactics must not work. Loud voices are *not* the same as violent deeds. Criticism is *not* the same as murder. Exposing government violence is *not* the same as blowing up buildings. It is grossly irresponsible to blur these distinctions. And those who rely on such smear tactics are in no position to lecture the rest of us about toning down rhetoric.

In fact, wide-open debate is the best chance for restraining violent impulses. Contrary to the *Los Angeles Times* editorialists, hearings on Waco would be a very good idea, especially now. Information is the enemy both of out-of-control government and of paranoia. Vigorous, open dissent is a powerful check on government excesses—and an important, peaceful outlet for citizen grievances.

Declaring those grievances illegitimate, and those citizens the philosophical allies of murderers, may make a weak president feel strong. But it won't make the grievances go away. And it won't make sleazy rhetoric any less sleazy.



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Melting-Pot Shots

I have enjoyed your magazine immensely, but I found the article "No Fruits, No Shirts, No Service" by Glenn Garvin (April) heavily biased and one-sided. Rather than openly address a serious problem, Mr. Garvin ostensibly wrote as a spokesperson for the Urban Institute, a pro-immigration organization that is hardly objective.

Were I to advocate a particular school, I would address those students who perform very well. I would not discuss the poor performing students. Mr. Garvin's article was written in the same manner. He failed to address the hundreds of thousands of immigrants who are not contributing to our society.

While immigrants "are at worst a break-even proposition in terms of creating jobs and paying for the government services they consume," they are not contributing to the general revenue for schools, roads, military, etc. As a taxpayer, I consume no direct services from any government. Were my taxes based on the government services I consumed, I would pay no taxes.

The article's greatest misrepresentation was the expressed fear of "draconian anti-immigration laws." Few Americans support ending immigration, but most want our borders protected and immigration controlled. Immigration should be a benefit, not a burden.

Our current immigration policy does not address the needs of the United States. We have become the repository for the world's excess population. Americans cannot afford to finance open borders and a welfare state. The United States is being hurt economically, socially, and culturally.

The most interesting bit of information was that "[a]bout 60 percent of all students earning advanced degrees in American universities in engineering today are foreign." Such a glaring fact, if true, is proof that our education system has failed. While taxpayers are forced to finance scholarships (many to unqualified students), they are obtaining degrees in fields that are not "relevant to industrial innovation." Instead of financing degrees in psychology, sociology, women's and black studies, taxpayer-financed scholarships should be restricted to those qualified individuals in fields that are relevant to industrial innovation. Our immigration policy should do the same.

Richard T. Dumont
Silver Spring, MD

George Borjas, professor of economics at University of California, San Diego, who once was very pro-immigration, concludes in his recent study that immigration costs $114 billion a year in job competition losses to U.S.-born workers. Can politicians who wish to court the middle and working classes in 1996 not address immigration?

In recent years, legal immigration alone brings about 1 million newcomers to this country who need jobs, health care, welfare, and many other services that we cannot even provide to millions of native-born Americans! Even if immigrants are high achievers, should the United States invest in its own citizens or citizens of other countries?

A CBS/*New York Times* poll published in February shows that most Americans feel that the new Congress should stress jobs, crime, and health care. An earlier CBS/*New York Times* poll showed that the majority of Americans across party lines favor a reduction in legal immigration.

If our policy makers in Washington, D.C., are serious about addressing voters' informed concerns, they should support an immediate moratorium on immigration. A five-year moratorium on immigration would save billions of dollars to fund crime-prevention programs, health care reform, work-training programs for welfare recipients and low-skilled workers, and measures to stop illegal immigration. A moratorium would also provide time to work out a long-term sensible immigration policy that would respond to our economic realities and resource availability.

Yeh Ling-Ling
National Representative, Outreach
Carrying Capacity Network
Washington, D.C.

Glenn Garvin opens with the charge that the United States is engaged in a "battle against immigration." Lest he forget, immigration is a purely discretionary policy. Arguments to reduce immigration are not attacks against individual rights since U.S. immigration policy extends privilege, not entitlement.

Mr. Garvin maintains that some legal and all illegal immigration (he does not distinguish between the two) is essential to provide low labor costs. Referring specifically to proposals to stop illegal immigration, Mr. Garvin quotes an illegal immigrant who says "Americans would have to put black people back into slavery" to achieve the same low labor costs. Amazingly, Mr. Garvin equates illegal immigration with slavery, *then advocates the continuation of this phenomenon.* Does Mr. Garvin really wish to claim that the preservation of American agriculture necessitates illegal exploitation?

Finally, Mr. Garvin fails to mention the studies, including the comprehensive

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study by Donald L. Huddle of Rice University, that find that immigration (legal and illegal) does *indeed* displace U.S. workers. One need only look at the janitorial and hospitality industries to see where native black labor has been replaced by recent immigrant labor.

It is a myth to claim that the U. S. economy requires immigration; in fact, most data show that current levels of immigration are economically and environmentally harmful. Rather than continuing down the current path, we should place a temporary moratorium on immigration while we rethink our current immigration policies.

Mark W. Nowak
Executive Director
Population-Environment Balance
Washington, D.C.

Glenn Garvin asks, "Once we've gotten rid of the immigrants, who is going to pick the lettuce and tomatoes?" He estimates that, among other things, it would cost the average American household $4.00 a week in higher produce prices if immigrants were no longer imported to work in the fields.

Is this all the cheerleaders for open borders have to offer? Mass unskilled immigration—with its undisputed effect of accentuating the gap between rich and poor, with its harmful impact on unskilled Americans, with its distorting effect on the economy, achieving economic growth at the cost of retarding economic development—this mass immigration can be justified because families will save $4.00 a week on groceries? (Incidentally, real economists have estimated that the cost would be far less.)

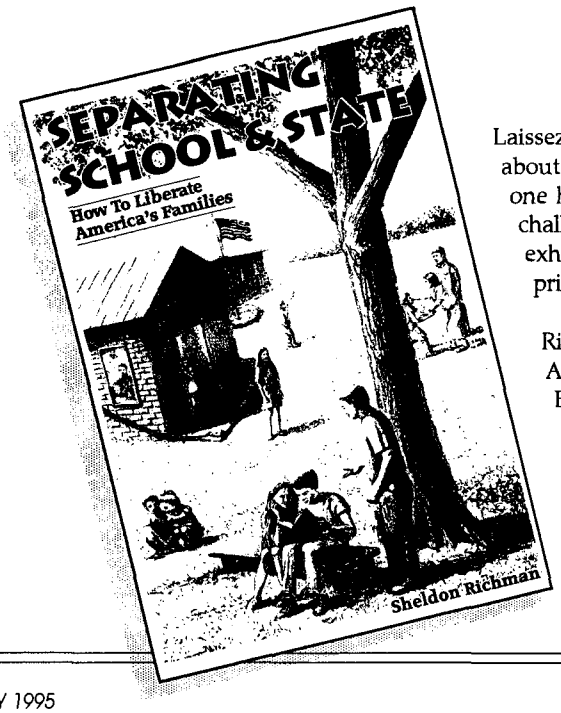
Mr. Garvin seems to recoil from the idea that without large-scale immigration of unskilled workers, vegetable growers and garment manufacturers would have a greater incentive to mechanize. Or that some products would be imported instead of produced domestically. But what's wrong with that? This is, after all, merely a description of continuing economic development in an industrialized country. American business shouldn't try to compete with the developing world on the price of labor, but rather should create high-wage jobs through greater productivity and automation.

And if some products are simply too expensive to produce in the United States without imported labor—in other words, if another country has a comparative advantage in the production of that good—then, by all means, let's buy it from them, importing products rather than people.

This points up the fundamental fallacy in Mr. Garvin's thinking, and that of many others whose libertarianism is as simplistic. Although economics teaches us that labor is a factor of production, it is also more—it is *people*. Whatever one's views on free trade—which I personally favor—bolts of cloth or casks of wine are mere

"This Book Should Be in the Hands of Every Teacher and Every Parent."

—John Hospers
Professor Emeritus of Philosophy
University of Southern California



Laissez Faire Books, the world's largest source of books on liberty, says this about *Separating School and State*: "This is a thrilling book! It goes where no one has dared go before. This book mounts the most fundamental challenge to the government school monopoly and provides an exhilarating vision of how much better off everyone will be with 100% private, voluntary schools."

John Taylor Gatto (New York Teacher of the Year) says: "Mr. Richman is right—state schooling doesn't work because it can't work." And Dr. Walter E. Williams (John M. Olin Distinguished Professor of Economics at George Mason University) calls this book "a powerful contribution." You'll call it an essential addition to your bookshelf.

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objects to be consumed. Immigrants, on the other hand, become new members of the receiving society, with human and civil rights unrelated to their status as workers.

Thus, the rotten core of the open-borders ideology—the implicit belief that workers are simply objects to be used, to be factored into an economic equation. Those working for immigration reform actually show immigrants more respect by acknowledging their humanity and taking into account their ongoing impact on the societies they seek to join.

Mark Krikorian
Executive Director
Center for Immigration Studies
Washington, D.C.

Glenn Garvin puts a functional face on absorbing legal and illegal immigrants. The dirty, poorly paid, and sometimes dangerous jobs that immigrants take are but stepping stones to bright futures, writes Mr. Garvin, including entrepreneurship and graduation from Ivy League colleges as early as the second generation. Work disdained by native Americans turns out to be a gift of (and for) capitalism as desperate Latinos, Asians, Caribbeans, and others penetrate our inner cities. Libertarians come into fortuitous agreement with liberals in rejecting the xenophobia of California's Proposition 187. Let's hear it for porous borders!

Not many potential sweatshops turn out like the happy mix at Kingston in Fountain Valley as described by Mr. Garvin and feted by *Fortune* and *Inc.* Take the latest revelation in Los Angeles, where workers paid even less than the minimum wage (and some who had not been paid at all) were caught turning out designer jeans that were sold in mainline America for $65 a pair. Did these workers quit their jobs and go on to college? And what of the migrant field workers who pick our crops? Despite the efforts of the farm workers union to promote their welfare and elevate the job above one to be left to illegals, are conditions that much better than yesterday? Do the children of farm workers attend school full time and are they as free as anyone else to make their way in the world? Not if they are needed in the field.

Mr. Garvin needs to tell us why market forces that (anecdotally) provide miraculous opportunities and successes in the second and third generations require such misery in the first. Personally, I would rather pay an extra 50 cents a head for lettuce than continue to benefit from the lowest wage the migrant labor pool will bear. The question for Garvin and for REASON is how the "free market" of owners and consumers can be brought to reward the paying of a living wage and the "affordability" of healthy and safe working conditions.

Denton Porter
Long Beach, CA

Glenn Garvin replies: To say I'm perplexed by some of these responses doesn't go nearly far enough. I have read and reread my story several times, and cannot for the life of me figure out where Richard T. Dumont got the idea that I was trying to pass myself off as a spokesman for the Urban Institute. Let me just state it clearly: I am *not* a spokesman, ostensible or otherwise, for the Urban Institute. Though I'd be happy to consider the job, if the price is right.

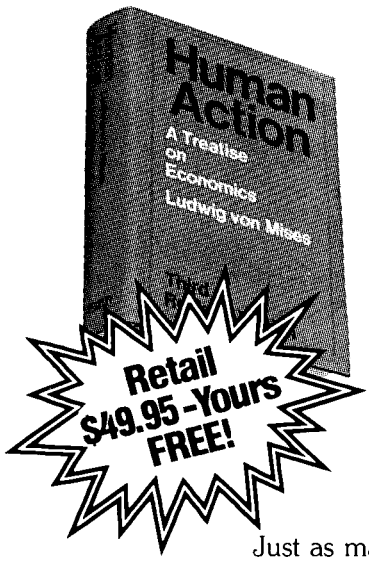
To further my confusion, I cannot tell whether Yeh Ling-Ling is attempting a deception, or simply got bored with George Borjas's most recent study of immigration. It is certainly true that Professor Borjas identified $114 billion in U.S. economic losses due to immigration. But then he proceeded to identify $120 billion in *gains*, leaving the balance sheet $6 billion in the black. (As to my article's alleged "greatest misrepresentation," I refer Mr. Dumont to the following two letter writers' calls for an immediate moratorium on *all* immigration.)

I admire the brass of Mark W. Nowak, who is willing to misrepresent my story in the very magazine in which it appeared. Alas, my regard does not extend to his economic sources. The Donald Huddle study to which he refers has been thoroughly refuted and even economists who share his opinion of immigration hang their heads when it is mentioned. Professor Huddle sent students to Houston construction sites to count the number of illegal aliens at work; he then simply *assumed* that each had displaced a native-born worker. From there it was an easy step to projecting the numbers onto the rest of the United States and came up with a million lost jobs in the construction industry alone.

And finally there's Mark Krikorian, who grieves that immigrants will work under harsh conditions for low wages here. His solution is to let them stay in the Third World and buy the products they make there under conditions that are assuredly far worse than those in the United States. In other words, low wages and harsh conditions are perfectly OK as long as they remain decorously out of sight. (That seems to be Denton Porter's point of view, too.)

I have no idea what Mr. Krikorian is talking about when he contrasts "economic growth" and "economic development." But I do know that the rest of his assertions—that immigration accentuates the gap between rich and poor, and takes jobs from unskilled Americans—are by no means "undisputed." Julian Simon, to name just one of many economists, has argued that immigration does not skew incomes; and in my original story I covered David Card's study that showed that even mass, abrupt immigration has little impact on jobs or incomes.

In fact, there's practically nothing in labor economics that is "undisputed," which is probably one reason why so many non-economists give up trying to make sense of it. It seems that for every study that purports to prove something, there's a counter-study purporting to disprove it. But, contrary to the assertions of these letter writers, the bulk of economic scholarship supports immigration as, at worst, a break-even proposition for the United States. A 1990 survey of 38 leading U.S. economists (including seven Nobel winners), conducted jointly by the Hudson Institute, the American Immigration Institute, and the Alexis de Toc-



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queville Institution, found that 80 percent believe that 20th-century immigration has had "a very favorable impact on the nation's growth." Not a single one thought the impact had been unfavorable.

Vial Bile

Jacob Sullum's article, "A Vial Crime" (May), gave me an idea to help win "the war on drugs." Let's rename everything for its possible use as drug paraphernalia and then go after the manufacturers! Plastic sandwich bags are now "marijuana baggies." Spoons are now "heroin cooking devices." Federal Reserve notes are "cocaine-sniffing instruments."

Drug warriors, like socialists, believe that if they could just get the right program in place, had a little more money and the right people running things, they would succeed. But, like socialism, the drug war is fundamentally flawed.

Even if drug use were to go up significantly with legalization (I don't believe it would), it would be preferable to the society we live in now, where such tragedies as befell Sam Zhadanov are becoming commonplace.

Scott Frost
Seattle, WA

I may be wrong, but nowhere in Jacob Sullum's article on Sam Zhadanov was it stated just who the end customers of Belkin and Edelson were, other than Roni Moshe.

If Zhadanov leased equipment and manufacturing space to Srebrianski at his Vortex location, who then made the vials for Belkin and Edelson as wholesalers to Roni Moshe, the owner of two general merchandise stores, and conceding that Edelson pleaded guilty to possession of drug paraphernalia with intent to deliver, to whom were they to deliver the merchandise other than Moshe?

In addition, in the last paragraph of the article the prosecutor says, "He admitted that he made hundreds of millions of crack vials." Why would an attorney opt for a plea bargain when this statement could have read, "The defendant admits that he made hundreds of millions of plastic vials that could be used for perfume, crack cocaine, or anything else that would fit into them including sand from the beaches of Florida for a tourist souvenir of their Florida vacation"?

James J. O'Malley
Encino, CA

Jacob Sullum replies: Based on conversations among the distributors and undercover purchases by investigators, it appears that the retailers did sell the containers to drug dealers (although the government did not cite any particular customers). Sam Zhadanov says he did not know that the containers could be used to package crack until late 1991 and did not realize that manufacturing them was considered illegal until his arrest. But making that lack of knowledge seem plausible to a jury would have been difficult, and Zhadanov was facing a minimum sentence of 14 years, the loss of all his assets, and the possibility that his wife might be charged. Under the circumstances, his decision to plead guilty is understandable.

Arendt Message

Paul A. Rahe's book review of Jean Bethke Elshtain's *Democracy on Trial* ("Civility Wars," April) was, I believe, unfair to Hannah Arendt. That Martin Heidegger was a supporter of National Socialism and that Hannah Arendt was a student of Martin Heidegger does not indicate any continuity of thought. *On Revolution* is a very instructive book indicating very clearly why the American Revolution succeeded and the French failed.

Arendt wrote, "Not 'life, liberty, and property' as such, but their being inalienable rights of man, was the result of revolution." These were the driving force behind both revolutions, but the French corrupted these rights by inclusion of what Arendt called the "Social Question"—in other words, "generic, unlimited 'rights of man.'" Social and economic "rights," or as Arendt described it, "the realm of necessity," invaded the political realm. Today, it is the private—i.e., identity politics—that is also invading the political realm and this seems to be what Elshtain's book bewails.

Arendt's assessment of the American Revolution and its results is correct: "[P]ower, which rests on reciprocity and mutuality, is the only "real power and legitimate." Doesn't this correctly describe Jefferson's view of "good government," "which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits"?

The reason the American Revolution succeeded was that its adherents created a republic with counterbalancing powers. What is destroying this foundation? The faith that people like Elshtain have in "democracy"—every man's ideas, needs, and wishes have invaded the political realm.

Arendt spoke of "The Recovery of the Public World." What is this "public world"? It is no longer the town halls of the American Revolution. It is not a place but a medium where ideas are exchanged and fought for, i.e. REASON. It is when "citizens" come together and "find a way to express their collective hopes and possibilities." Only after the fittest ideas have survived can we then turn to the political realm and apply them. This, of course, includes what Professor Rahe calls "the fundamental principles" of liberal "democracy" or "republics."

Edgar Grinnell
Worcester, MA

Paul Rahe replies: In quoting the particular passages from Hannah Arendt's *On Revolution* that he has chosen, Edgar Grinnell unwittingly casts light on the woolliness of her quite fertile mind. To begin with, apart from alluding in the vaguest of terms to the "Social Question," neither he nor she gives us any way by which to distinguish the inalienable rights of man, embraced by revolutionaries on both sides of the Atlantic, from what Arendt calls the "generic, unlimited 'rights of man.'" In fact, the rights asserted in the crucial second paragraph of our Declaration of Independence are as "generic" and "unlimited" as those described in the French Revolution's Decla-

ration of the Rights of Man and Citizen, and they gave rise to what was for Americans from 4 July 1776 on a burning "Social Question"—whether it was possible and legitimate for one human being to hold property in another.

Arendt's assessment of the American Revolution and its results is in other regards incorrect as well. There is all the difference in the world between a government of counterbalancing powers limited in the manner described by Thomas Jefferson and a political regime which treats as "real...and legitimate" any "power, which rests on reciprocity and mutuality" and expresses the "collective hopes and possibilities" of its citizens. One of the advantages that we derive from our attachment to the "generic, unlimited 'rights of man' " is that a respect for these rights limits what we as a people can legitimately do.

Neither "reciprocity" nor "mutuality" nor our "collective hopes and possibilities" can justify a breach of these rights. As Jefferson put it in his First Inaugural Address, we must all "bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable." It is symptomatic of Hannah Arendt's debt to her beloved teacher Martin Heidegger, and it is indicative of her acceptance of his critique of Western Civilization's reliance on rationalism, that one finds in her musings on politics nothing comparable to the American Founders' insistence that the popular will is unjust when it contravenes what reason teaches us concerning the individual's inalienable right to life, liberty, and the pursuit of happiness.

Arts and the Man

"Artistic Licenses" by Nick Gillespie (April) was excellent, but it missed one of the key elements in the debate about federal funding of the Corporation for Public Broadcasting: privatization.

The loss of federal subsidies does not in fact threaten public broadcasting. It threatens only the fact that it is not advertiser-sponsored.

Public broadcasting will easily survive the loss of tax funds. What will not survive is the elitist idea that advertising and public choice are to be avoided at all costs. This is a classic case of liberals wanting centralized power in bureaucratic hands, hence avoiding control by the public and requiring subsidies. Conservatives want that power devolved to the public and paid for by private sources through advertising geared to the public's choices.

Matthew C. Fox
Chicago, IL

As an admirer of the quality programming found on PBS, I found Mr. Gillespie's remarks unsettling. I would prefer PBS to thrive, not just survive, and it needs more funding. Several times a year we must endure "pledge drives" where PBS officials beg, plead, and cajole for individual donations and still get only a small percentage of viewers to give. The deep pockets Mr. Gillespie refers to are rather shallow in my viewing area.

The suggestion that the best PBS offerings might be picked up by broadcast or cable TV is plausible, but is it desirable? Would *The MacNeil/Lehrer Newshour* be as effective if it were interrupted by commercials? It would no longer be a news hour but a news 45 minutes. PBS could solve their funding problems with advertising, but the fact that they don't have these interruptions is an attribute.

Mr. Gillespie's personal dislike of *Car Talk* and *Prairie Home Companion* does not mean these shows are without merit. How many "landmarks of civilization" does he find on broadcast or cable TV? Other arts may be seeking a "seal of approval," but I perceive PBS as seeking only funding. Considering all the pork and waste in government spending today, the tax dollars received by CPB is money well spent.

Arthur L. Hale
Hampton, VA

Nick Gillespie assumes that programs such as *Barney* and *Sesame Street* would be picked up by broadcast or cable TV if not funded by the government. He's probably right, but they would be funded by objectionable advertising pushing products that kids would be better off without.

Public radio carries excellent classical music, as well as explanatory information on such programs as *Adventures in Good Music* and *Performance Today*. And all of this comes without the obnoxious advertising of commercial radio or television. However, only about 10 percent of listeners contribute to help fund public radio. I'm afraid that without public (government) funding, some of these "good things of life" would be lost.

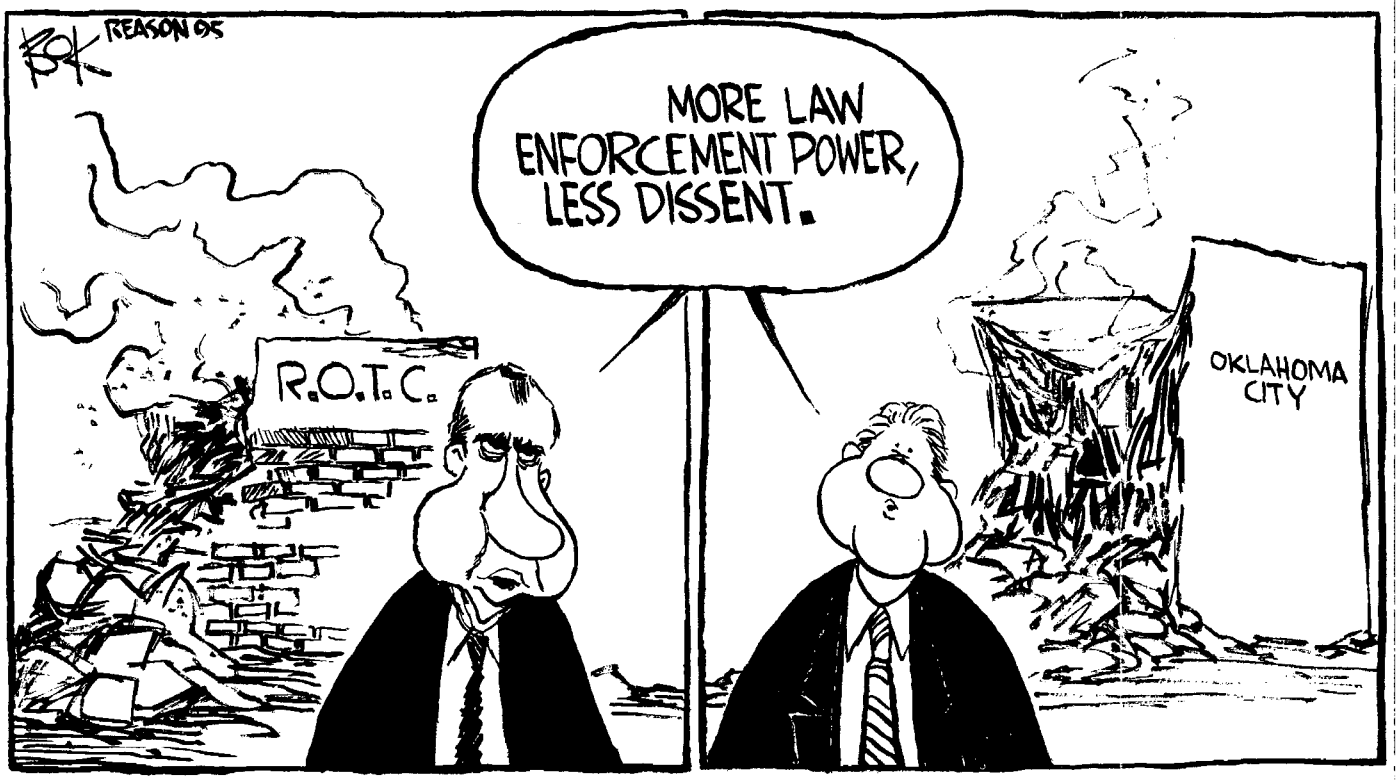
R.H. Booth
Aiea, HI

Nick Gillespie replies: Arthur L. Hale and R. H. Booth are in the difficult position of admitting that the very people who tune into public broadcasting don't think enough of it to pay for it. Why then should people who don't even listen to NPR or view PBS be stuck with any part of the tab, no matter how small the bill?

Beyond that, I don't see commercials as inherently disruptive to television or radio programs. Nor do I see public broadcasting as currently devoid of advertising—most shows have fairly lengthy bits in which they list their sponsors (often including the Corporation for Public Broadcasting, euphemistically defined as a "private corporation funded by the American people"). And, in fact, shows such as *Barney* and *Sesame Street* can legitimately be seen as advertisements for a dizzying array of trademarked merchandise on sale everywhere.

Contrary to Matthew C. Fox, I'm not sure that a complete withdrawal of government funding (which seems unlikely now anyway) would necessitate a shift to network-style advertising anyway. In terms of viewer donations, CPB has had a banner year so far. If government funds were actually zeroed out, I suspect that some current free riders would pony up contributions. Deep-pocketed entertainment industry types who have voiced support of public broadcasting, such as Garth Brooks, Charlton Heston, and Barbra Streisand, would surely help out.

HENRY PAYNE



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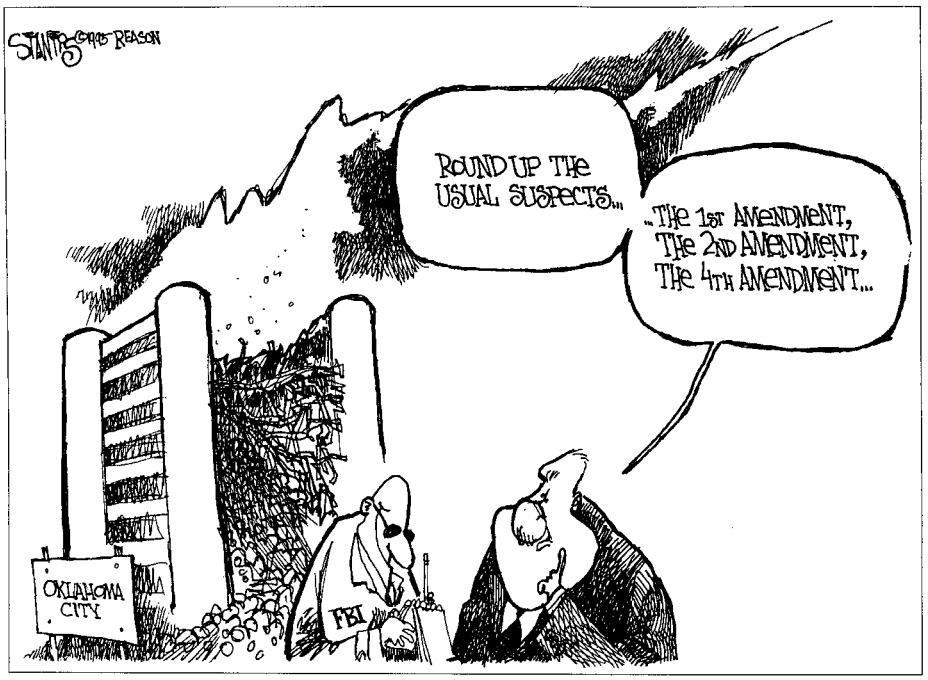
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SCOTT STANTIS

■ **No, he wasn't happy just to see** them. Police arrested Ohio resident Brian Dawson for speeding and for driving with a false license. He couldn't make bail, so officers at the police station asked him to get into jail garb. That's when the one-and-a-half-foot-long boa constrictor he had in his underwear popped out.

■ **Owners of the ship once known as the** *Exxon Valdez* have applied for a federal subsidy. SeaRiver Financial Holdings, an Exxon subsidiary, says that since the ship has been banned from Alaskan waters, they have had to use it in international shipping. The subsidy they want is available to U.S. ships engaged in overseas trade.

■ **When Benazir Bhutto visited Washing**ton, D.C., earlier this year, she was introduced to the Senate by Jesse Helms (R-N.C.). Helms announced, "The Foreign Relations Committee has had the honor of welcoming the distinguished prime minister of India, and I wish to bring her to the floor." Helms then went on to tell his colleagues that he and Bhutto had just completed "a delightful hour-and-a-half conversation" about India. This all must have confused Bhutto, who is actually the prime minister of Pakistan.

■ **At the urging of Sen. Bob Graham** (D-Fla.), the Defense Department, the U.S. Postal Service, and Amtrak have pledged not to buy advertising time on excessively violent television shows. Lord knows the armed forces wouldn't want to attract anyone with an interest in violence.

■ **Earlier this year, the State Department** sent to Congress its annual human rights report, a listing of the world's thugs and oppressors. On the list is Syria, for, among other things, having no laws mandating access to public buildings for the handicapped.

■ **A Texas judge has issued an arrest war**rant for radio shock jock Howard Stern. He has charged Stern with disorderly conduct. Stern's crime: He criticized the music of the late Tejano singer Selena.

■ **Leftist lawyer William Kuntsler, famous** for defending unsympathetic high-profile clients, has his limits. Kuntsler ruled out representing Oklahoma City bombing suspect Timothy McVeigh, claiming, "This crime is so evil, so senseless, I wouldn't want to engage my talents in defending this client." Besides, Kuntsler is a busy man: He is currently representing the alleged World Trade Center bombers.

■ **In 1992, James Nichols, the Michigan** farmer who has been indicted as one of McVeigh's co-conspirators, informed the government via the U.S. Postal Service that he no longer considered himself a citizen of either the Great Lakes State or the United States. In March 1995, he got back in touch with the government—to complain that he was not getting all the farm aid he was due. According to *U.S. News and World Report*, Nichols received $89,950 in farm subsidies over six years. That made Nichols the fifth-largest beneficiary of such aid in Sanilac County.

■ **The Australian immigration office has** ruled that an American woman is too fat to become a permanent resident of that country. Charlene Boot has to lose 24 pounds before she can join her new husband down under.

■ **Two second graders in Massachusetts's** North Brookfield Elementary School have been suspended for violating a school ban on "dangerous weapons." The two brought rubber Mighty Morphin Power Rangers swords to class. The pair spent their suspension time playing Nintendo games. Said one, "I've learned my lesson. It would be fun to get kicked out for another day."

■ **There may be only one way to get** honey from a bee, but America's beekeepers know that there are plenty of ways to get money from taxpayers. Two years ago, Congress ended the decades-old subsidy program for beekeepers. The beekeepers responded by asking the International Trade Commission to approve duties on Chinese honey under a Cold War–era law allowing sanctions on Communist countries. China supplies 20 percent of America's honey. The ITC agreed to 25 percent tariffs, but that wasn't enough for the bedraggled bee farmers. They accused the Chinese of dumping honey below cost in the United States. The Clinton administration then proposed tariffs of up to 157 percent.

—Charles Oliver

Fried Pork

Northwest representatives fight to save socialized electricity.

By Ed Carson

Bonneville: Power too cheap to privatize?

HOUSE REPUBLICANS BENT ON downsizing government are finding that winning the war of ideas is the easy part. The hard part seems to be convincing their colleagues—and sometimes themselves—to get rid of pork-barrel politics as usual.

The case of the Bonneville Power Administration illustrates the difficulty of changing the Washington culture. Bonneville is one of five federal power marketing administrations that sell hydroelectric power at prices below market rates. The PMAs don't pay taxes but do carry a large debt burden for which taxpayers are liable. Rep. Scott Klug (R-Wis.), Speaker Gingrich's privatization pointman, believes it is time to get the feds out of the utility business. But his proposal to sell Bonneville is running into united opposition from Northwest representatives.

PMAs provide roughly 7 percent of the electricity sold in the United States. But Bonneville is in a different league: Serving Oregon, Washington, Idaho, and parts of Nevada, it provides roughly half of the electricity consumed in the region. Northwest ratepayers pay less than half the national average. Forty percent of the nation's aluminum industry, an electricity-intensive business, is in the Northwest.

So it's no surprise that Northwest Democrats and Republicans have put aside "petty" ideological differences to fight for cheap juice. Even the supposedly revolutionary, no-more-politics-as-usual freshmen from the region are opposed to selling off Bonneville. Rep. Linda Smith (R-Wash.), who says she wants to eliminate four Cabinet-level departments, told *The New York Times*, "I've always supported privatization, but not if it's going to destroy the economy of our region."

Privatization opponents also argue that selling Bonneville could threaten salmon runs already decimated by its dams. But the Competitive Enterprise Institute's Paul Georgia says government ownership is responsible for much of the devastation.

"If the government hadn't been subsidizing Bonneville all these years, we wouldn't have built so many dams on the Columbia river, so we wouldn't have had so many negative environmental effects," he says.

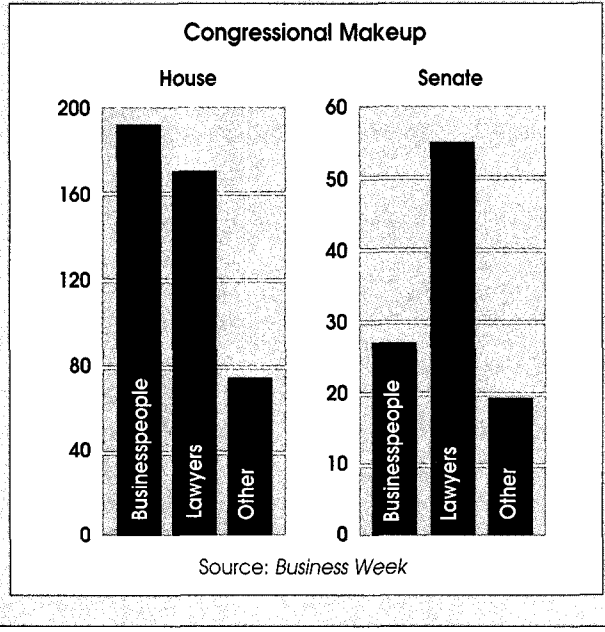
After considering privatizing all the PMAs, the Clinton administration ultimately proposed selling off just the other four. The House Budget Committee also will probably bow to political pressure and spare Bonneville. Of course, any privatization at the federal level would be a substantial change. But the change in Washington is evolutionary, not revolutionary—and pork is far from extinct.

Back to Business

More members of Congress come from business backgrounds.

By Ed Carson

Congress, which this year agreed to abide by the rules it places on everyone else, now is full of people who had to deal with federal regulations every day. *Business Week* reports that for the first time in decades, people from business, banking, and real estate backgrounds outnumber lawyers in the House of Representatives—191 to 170. Nearly half of the 73 freshman Republicans in the House ran their own businesses. All told, the freshman class of Republicans and Democrats includes 64 businesspeople and 28 lawyers. Over in the slow-paced Senate, lawyers still outnumber businesspeople 54 to 27.



Source: *Business Week*

Of course, some lawyers, such as Rep. Chris Cox (R-Calif.), are leaders on deregulation and privatization. And Speaker Newt Gingrich and House Majority Leader Dick Armey are neither businessmen nor lawyers, but former professors. But individuals who have personal experience with federal regulations and taxes are more likely to be skeptical of additional laws than those who made the law their profession.

Speech Code

A drug warrior tries to stifle critics of prohibition.

By Rick Henderson

IN APRIL, A POWERFUL MEMBER OF CONgress introduced a bill that would punish the donors of organizations that advocate legalizing certain unlawful activities. In this instance, the targets aren't people who bankroll rural militias; instead the congressman wants to zero in on supporters of the Reason Foundation (publishers of REASON), the Cato Institute, the Drug Policy Foundation, and any other tax-exempt group that promotes drug legalization.

On April 6, Rep. Gerald Solomon (R-N.Y.), chairman of the House Rules Committee, proposed HR 1453, a bill that would revoke the tax-exempt status of any organization "if any portion of the activities of such organization consists of promoting the legalization of any controlled substance." Solomon promised to attach his proposal as an amendment to some other bill that's likely to pass.

In a vitriolic statement Solomon entered in the *Congressional Record*, he singled out "the libertarian elites at the Cato Institute" and the "deceptive, sinister, and seedy" Drug Policy Foundation as two examples of groups that have placed "the American family...under attack" by advocating an end to prohibition.

Solomon would also move beyond revoking the tax-exempt status of organizations; he would instruct the Internal Revenue Service to hunt down their donors. "These organizations and the individuals involved with them are violating United States Tax Code," he said. "They need to be investigated and their contributors should be required to pay taxes on past contributions." The bill would affect not only policy organizations but other nonprofits, including, for instance, drug treatment clinics, universities, and religious groups.

Phil Gutis, a spokesman for the American Civil Liberties Union, calls Solomon's bill "patently unconstitutional. The [Supreme] Court has been very clear that you can't punish individuals or organizations for what they advocate....The only goal of this bill is to prevent advocacy."

Gutis says conservative drug warriors like Solomon should be careful before they push new restrictions on advocacy. A legislative mechanism that lets the feds punish advocates of drug legalization today, he says, could later be used to punish persons "because they belong to the [National Rifle Association] or subscribe to *Soldier of Fortune*."

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Balance Sheet

By Rick Henderson

Assets

Independence Initiative. To shake off congressional micromanagement, public broadcasting embraces privatization. A proposal by PBS, National Public Radio, the Association of Public Television Stations, and Public Radio International would replace tax subsidies with a private endowment for public broadcasting. The endowment would get its seed money from the proceeds of FCC license and spectrum auctions—an idea first suggested in a 1988 Reason Foundation study.

Loosed Lips. The Supreme Court raises two cheers for free speech. In *McIntyre v. Ohio Elections Commission*, the Court protects individuals who want to post leaflets and other political literature anonymously. (See Trends, Apr.) And in a unanimous decision, *Rubin v. Coors Brewing*, Justice John Paul Stevens says a 1935 law that prevents beer labels from listing alcohol content is unconstitutional and "nothing more than an attempt to blindfold the public." (See "BATF Out of Hell," May 1994.)

Hot Seats. How to build a mega-sports complex: Sell the seats. Permanently. The NFL's expansion Carolina Panthers raise $100 million for their downtown Charlotte stadium by selling season-ticket holders "permanent seat licenses." People pay between $600 and $5,400 and "own" their seats. Cash from PSL sales help land the Rams in St. Louis, the NBA's Raptors in Toronto, and will move the Bullets to downtown D.C. PSLs also interest franchise owners seeking new stadiums in Chicago, Cincinnati, Seattle, and Tampa.

Scales of Justice. The U.S. Sentencing Commission tackles an inexplicable drug-war excess. If you're busted for possessing crack cocaine, the criminal penalties are *100 times* more severe than those for having the same amount of powder cocaine. The commission reduces crack penalties to the same level as those for powder. Congress must overrule the commission by November 1; otherwise, the equal penalties will automatically take effect.

Liabilities

Sinking Feeling. Reversing 35 years of anti-Castro policy, the White House says the United States will accept no more boat people from Cuba. Refugees picked up by the U.S. Coast Guard will be returned to Havana. There they will face prison, and likely worse.

Pot Holders. The feds continue to stifle medical marijuana. San Francisco AIDS researcher Donald Abrams spent three years gaining FDA approval for a privately funded study to see if smoking marijuana alleviates nausea and promotes weight gain for AIDS patients. But the National Institute on Drug Abuse, the only legal source of marijuana for research, refuses to provide pot for the study. Researchers must now spend their money on court challenges rather than patient tests.

P.C. Inc. The left has always touted "social investments" in inner-city housing projects and "community development banks." Now they're no longer satisfied with merely persuading potential investors; they want to raid your pension. At the urging of Labor Secretary Robert Reich, the White House plans to overturn the ERISA rules which require pension-fund managers to seek the highest rates of return. Fund managers will now be "encouraged," possibly with lending quotas, to invest in "socially useful" projects. Almost $5 trillion is at risk.

Follow the Money. FBI Director Louis Freeh tells Congress his agency doesn't need new investigative powers. But Bill Clinton continues to stump for an "anti-terrorist" law that would enhance federal capriciousness. One example: On CNN's *Larry King Live*, Sen. Fred Thompson (R-Tenn.) points out that Clinton welcomed Sinn Fein leader Gerry Adams to the White House. But under the president's bill, any American who gave money to Sinn Fein would be labeled a terrorist.

Keeping Company

Job stability is still the rule.

By Nick Gillespie

CONTEMPORARY CONVENTIONAL wisdom holds that workers are moving from job to job with increasing rapidity. As an economist for Manpower, a temporary-help company, put it to *The New York Times*, "The labor market today, if you look at it closely, provides almost no long-term secure jobs."

But such a view is contradicted by the latest research on the subject. "Job Stability in the United States," a recent National Bureau of Economic Research working paper by University of Pennsylvania economists Francis X. Diebold and Daniel Polsky, and Michigan State's David Neumark, finds that job stability for most workers has either remained the same or slightly increased over the past 20 years.

Using Census Bureau data and correcting for business cycle changes, the authors estimate that the chances of a worker being with the same employer in 1983, 1987, and 1991 remained about even. In fact, the four-year retention rate decreased only slightly, from 53 percent for 1983–1987 to 51 percent for 1987–1991. Similarly, for the past two decades, the likelihood of a worker being with the same firm after 10 years has hovered around one in four, increasing from 26 percent for 1973–1983 to 27 percent for 1981–1991.

The authors, who break job-retention rates down in terms of race, gender, education, and occupation, do find some evidence of relative declines in job stability for groups that experienced the sharpest relative wage declines during the '80s and early '90s—especially among unskilled workers, high school dropouts, high school graduates, and blacks.

"Taken as a whole," however, Diebold, Polsky, and Neumark conclude, "the evidence to date certainly does not point toward a...decline in job stability." ®

BOOK REVIEW

How to Publish a Book & Sell a Million Copies

by Bill English, Sun Newspapers

With the advent of desktop publishing almost anyone can get their book in print today. Computer technology has slashed the price of creating product and opened new avenues for small presses. But getting the book printed is only half the battle. In America, censorship still exists in the form of distribution. You may have the greatest book in the world to offer—but if the public never sees it they can't buy it.

In HOW TO PUBLISH A BOOK AND SELL A MILLION COPIES, noted author and lecturer Ted Nicholas reveals how to market your book and get it out to a vast readership. Nicholas clearly demonstrates that there are huge profits to be made from "how to" books, special reports, videos, or audio tapes. Nicholas himself is a college dropout who has made millions of dollars from such famous titles as HOW TO FORM YOUR OWN CORPORATION WITHOUT A LAWYER FOR UNDER $75. If you read newspapers or magazines you've seen his ads everywhere.

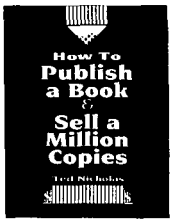
But do they work?

According to Nicholas, his P.O. Box is crammed with checks.

And that sure beats a mailbox full of rejection slips from the major New York publishing houses.

The key to Mr. Nicholas' success is to take complete control of your product and its distribution. If you have a good idea then you should have the guts and determination to back it with your own time and money.

HOW TO PUBLISH A BOOK AND SELL A MILLION COPIES tells you exactly what to do so you won't fail or spin your wheels. You learn how to pick where to advertise. You learn how to get a cut rate; what pages of a magazine give the best results. Even how to get free advertising.



How To Publish a Book & Sell a Million Copies

Ted Nicholas, Author
217 pages
Nicholas Direct, Inc.

Nicholas reveals the truth behind the publishing myth. There is no mystery to the book business. Books are a great product because they are relatively cheap to manufacture and distribute and have a fantastic markup. It is not uncommon for a book to sell for ten times the cost of production. And each book is unique. No one else has exactly what you are selling.

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But this is just the start of the benefits to self-publishing. As the publisher of your own book you are more apt to go out and push it. Many major publishers have too many titles and let many good books slip between the cracks. But when the author is in control of publicity and distribution that is not likely to happen.

Nicholas also points out that once you self-publish and have had some success, New York may well become interested in your work. This happened to Mr. Nicholas— but he chose to remain independent; he was simply making too much money to turn over any of his rights. After all, he had done the work and deserved the profits.

He was in control.

HOW TO PUBLISH A BOOK AND SELL A MILLION COPIES gives you extremely detailed instructions on what types of ads to run and where to run them. Nicholas advises you to start small and work your way up. The book comes with an audio and one of the most fascinating things about it is the development of the ad copy for HOW TO FORM YOUR OWN CORPORATION WITHOUT A LAWYER FOR UNDER $75. Nicholas began with a tiny ad in the *Wall Street Journal* that soon blossomed to a full page. Never satisfied, he refined his copy until he had a selling tool that was almost impossible to resist.

But you don't have to waste the time he spent on trial and error. Nicholas gives you all the secrets in the cost of the package.

Ted Nicholas is the kind of guy who is going to survive in the America of the future. He doesn't sit on his hands and wait for a corporation to feed him a check. He goes out in the world and sells a product of his own creation. He makes money from his own ideas. He pays mega taxes and helps to fuel the economy. This country needs more guys like Mr. Nicholas. Big Brother and Uncle Sam can no longer be counted on to take care of us. One thing is for sure— Ted Nicholas isn't losing any sleep over the health of Social Security.

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A well kept secret revealed in the book is how many authors have become rich and famous by first publishing their own books. These include Doug Casey, Dr. Wayne Dyer and James Redfield, author of *The Celestine Prophecy*, which has been the number one best seller .

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GUTS CHECK

ART MATSON

By Carolyn Lochhead

Republicans control the nation's purse for the first time in 40 years. Do they have the courage to roll back federal spending?

Fresh from the victories of their first 100 days as Congress's new majority, Republicans stand on the brink of an epic clash over federal spending whose outcome will set the nation's economic course for years to come, and determine whether GOP dominance is lasting or brief.

Republicans are resolved to balance the budget by 2002, the supreme vow that undergirds their aim to shrink government and restore the nation's fiscal integrity. But like Pickett's troops before their suicidal charge at Gettysburg, they find themselves facing daunting and possibly overwhelming odds. Not since 1931 has the budget been balanced with any consistency. Doing so would change the course of 20th-century government.

At Gettysburg, a handful of the southern troops who charged the Union fusillade survived to reach the enemy line, only to fall at the spot historians now call the high watermark of the Confederacy. Republicans today declare this to be their historic moment, and speak bravely of courage, boldness, and the nation's salvation for unborn generations. Yet still a sense of dread is evident among even the most enthusiastic GOP troops. They know that this summer's struggle could mark the high point of their own war against the immense forces that have spawned the modern state.

Like many Republicans on Capitol Hill, Sen. Bill Frist, the Tennessee heart surgeon who came from nowhere to defeat Democrat Jim Sasser last November, said he will fight to the death. "I've been in medicine for the last 20 years," says Frist, sitting in his Capitol Hill office one afternoon in March, "and I'm going to be here for six or 12 years and leave the Senate after that. I have a finite time in which to accomplish my mission...and suffer whatever ramifications there are from a political standpoint."

Republicans know that they must scale back or end scores of programs that are just as popular with their own allies as with their foes. Business subsidies have to be slashed along with Democratic favorites like welfare and public television. And as a cold matter of arithmetic, Republicans must take on the huge middle-class welfare programs called entitlements.

They also know that to mess with middle-class welfare is to violate the first principle of American political survival. The last time they tried it, in 1986, it cost them the Senate.

Entitlements are programs that automatically pay benefits to anyone who asks and qualifies. The scariest one for Republicans is Medicare, the health care program for the elderly. Second only to Social Security in the pantheon of sacred cows, it is careening wildly out of control, its "trust fund" going into the red next year. Medicare will be the decisive battlefield in this year's budget war.

"The real problem is that the public wants to have its cake and eat it too," says a top Republican Senate aide. "These programs exist for a reason. There are well-organized and identifiable groups that benefit. A lot of people are getting more than they're putting in, and the elderly especially are getting a nice deal."

The political landscape right now, he says, "is very uncertain. Nobody knows where it's going."

Half of all Americans now receive some form of entitlement, whether Social Security, Medicare, Medicaid, Aid to Families with Dependent Children, unemployment insurance, veterans benefits, federal pensions, food stamps, school lunches, the earned-income tax credit, farm subsidies, or disability payments.

Entitlements consume more than half of the $1.5-trillion budget. They are driving the chronic $200-billion deficits, which will double to $421 billion by 2005. The General Accounting Office, the Congressional Budget Office, the Office of Management and Budget, and the Bipartisan Commission on Entitlements and Tax Reform have all charted the budget's calamitous current course and urged quick action.

Interest on the debt, at $203 billion, is now the third-largest item in the budget, consuming nearly as much as all domestic programs combined. Interest payments will overtake the entire defense budget in just five years. By 2012, entitlements and interest on the debt will consume all federal tax revenue, leaving no money for anything else: no Head Start, no national parks, no highways, no courts, no Pentagon.

Interest on the debt, at $203 billion, is now the third-largest item in the budget, consuming nearly as much as all domestic programs combined. Interest payments will overtake the entire defense budget in just five years. By 2012, entitlements and interest on the debt will consume all federal tax revenue, leaving no money for anything else: no Head Start, no national parks, no highways, no courts, no Pentagon.

Already, government borrowing is absorbing fully half of all U.S. savings, draining the economy of investment in the future productive capacity vital to higher living standards. Gargantuan government borrowing is already depressing the economy.

When the baby boom, now in middle age, begins to retire in just 15 years, entitlement costs will explode and the nation will find itself in financial crisis. Entitlements must be contained, not just to balance the budget, but to prevent a ruinous decline in living standards and a crushing tax burden on future generations.

Republicans, not entirely by design, are making it their crusade to avert this calamity. The keystone pledge of the Contract with America was the constitutional amendment to balance the budget. Republicans hoped it would give them the political cover to begin controlling a Great Society run amok.

But on March 2, when the amendment fell one vote short in the Senate, the GOP found itself out on a plank that had just been sawed off.

The amendment "would have brought the president to the table," said a rueful Pete Domenici, chairman of the Senate Budget Committee, just before the measure went down. "It would have brought many of the parties that are out there warring over

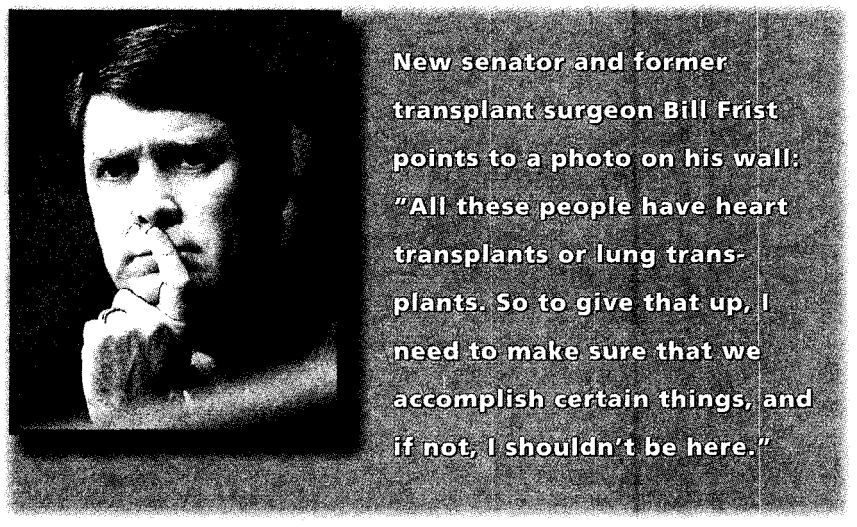
their own money and their own programs to the table, because the will of the sovereign states and the people would say we can't continue what we're doing. That was the strength of it. Without that, it's going to be very, very difficult."

In the fight to pass the amendment, Republicans deeply committed themselves to balancing the budget without it. Any retreat now, they are convinced, would doom them. This is their moment, they contend. "There's a big risk in politics," says Rep. Bill Baker (R-Calif.). "The disaster awaits us if we don't take that risk."

But many fear that taking the plunge could doom them too. John Danforth, the retired Missouri Republican senator who co-chaired the entitlements commission, says tackling entitlements "could be political suicide. That's why they haven't been dealt with in the past."

The budget problem is fundamentally political. The government could continue to grow at 3 percent a year and still get to a balanced budget in seven years, because tax revenue climbs continually as the economy grows. The problem is that many programs are growing much faster than that. Medicare is expanding by more than 10 percent a year; it will cost $174 billion this year and balloon to $272 billion in five years. Along with Medicaid, the health program for the poor, Medicare is the root of the federal deficit and the chief obstacle to balancing the budget.

It also provides health care to 32 million elderly at bargain-basement prices. Current retirees are getting about $5.00 in benefits for every $1.00 they paid in payroll taxes, and the deal gets better every year. The Urban Institute's Eugene Steuerle estimates that the lifetime value of Medicare benefits for an average retiring couple will increase an astonishing $100,000 over the current decade: from $186,100 in 1990 to $278,600 by 2000.



New senator and former transplant surgeon Bill Frist points to a photo on his wall: "All these people have heart transplants or lung transplants. So to give that up, I need to make sure that we accomplish certain things, and if not, I shouldn't be here."

The GOP is about to get a dose of bitter medicine, as the same health-industry groups that helped defeat President Clinton's government takeover of health care—a defeat that helped sweep the GOP to a landslide in November—now wage all-out war to prevent any federal retreat from health care.

The American Association of Retired Persons is already gunning for the GOP. Industry groups are preparing versions of "Harry and Louise" ads to attack Medicare and Medicaid changes. Even the GOP governors are working overtime to preserve their Medicaid money. Washington policy analysts are already wondering out loud if health care will turn out to be Bill Clinton's ticket to re-election after all.

"To make this big change in spending and taxing is going to be extremely difficult," says the GOP aide, "and I don't think even the members are all fully aware of how difficult it will be—although they are starting to get an idea—nor is the public aware."

The one big success Democrats scored in the GOP's first 100 days was to stop the Balanced Budget Amendment, and they did it by claiming the measure would "plunder" the Social Security "trust fund," blithely ignoring the fact that the so-called trust fund is being "plundered" now. The argument was completely disingenuous, but it worked.

Rolling back government is much easier in the abstract than in its specifics, not only for politicians, but also for the public. Politicians' hypocrisy often simply mirrors the public's. Republicans rightly decry the willingness of liberals to finance their compassion with other people's money. But conservative voters also prefer to cut other people's programs while saving theirs, like farmers who bank hundreds of thousands of dollars in crop subsidies while denouncing welfare mothers.

Sen. Richard Lugar, a Republican running for president, has demonstrated that political courage does exist, offering a plan to phase out the farm subsidies that go to his own Indiana constituents. But sitting right next to him as he testified to the Senate Budget Committee in February was North Dakota Democrat Kent Conrad, fresh from killing the Balanced Budget Amendment. Conrad had been arguing that Congress can balance the budget without an amendment, but that day he was busy insisting that farm subsidies have to be off the table.

Conrad has a big Republican friend over in the House, where Kansan Pat Roberts has been holding Agriculture Committee field hearings that seem designed to undermine Lugar. The witness lists read like a subsidy pep rally: Mr. Don Crane, Ford County Wheat Growers; Mr. Larry Kepley, Farm Credit System; Mr. Otis Molz, Farmland Industries; Mr. Larry Williams, Kansas Bankers Association; Mr. Rod Lenz, Colorado Potato Administrative Committee; Mr. Dave Carter, Rocky Mountain Farmers Union, and on and on in an endless parade indistinguishable from the ones former Democratic chairman Kika de la Garza used to run.

The spectacle that raged over the $16-billion package of spending cuts in this year's budget, known as rescissions, offered another telling portent. The cuts unleashed howls of protest from Democrats who portrayed each trim as a mean-spirited attack on the poor to pay for tax cuts for the rich. Yet they totalled a mere 1 percent of the $1.5-trillion federal budget.

California Republican Jerry Lewis, chairman of the House

RICHARD A. BLOOM

Appropriations subcommittee that came up with $9.5 billion of the House package, emerged from the exercise furious at his own colleagues. "There are significant chinks in our armor as we go to battle at serious budget time," Lewis warns. "Unless we are willing to regroup and rethink, then we are absolutely whistling in the proverbial wind."

Lewis points to the $206-million reduction he proposed for the behemoth $38-billion veterans program. Knowing that the notoriously ill-managed veterans hospitals are nonetheless "sensitive and controversial," Lewis says he decided to preserve spending levels at the level requested by President Clinton, plus a House add on. He said he sought only to eliminate more money that had been added by the Senate for six ambulatory care facilities. President Clinton immediately excoriated this half-a-percent trim that left spending higher than his own request as an ugly assault on veterans.

Then when cutting time arrived, Lewis says, Bob Stump (R-Ariz.), the chairman of the Veterans Affairs Committee, and Gerry Solomon (R-N.Y.), chairman of the Rules Committee, led the retreat, saying they wanted to restore the money before the Democrats did.

"When you got right down to it, they weren't even willing to take that step," Lewis says. "People say, 'Cut spending, but make sure government fills the pothole in front of my house.' When people who are the biggest of budget cutters have programs that they're emotionally involved in—even though they are huge programs—there's not a dime of it that can afford to be considered."

If such timidity, Lewis says, "is a reflection of the real intestinal fortitude" in both parties, "then there are real problems in the House of Representatives before you even get to the Senate."

The Senate, of course, is led by Bob Dole, the new media darling now viewed by liberals as the pillar of moderation who will turn back the House barbarians. In a *New York Times* profile, the Senate Republican leader and number-one contender for the GOP presidential nomination said his message would be, "reining in government and all that other stuff."

Dole often sounds eerily reminiscent of George Bush, resorting to Bushisms when trying to articulate the GOP message of smaller government and other elements of "the vision thing." His lieutenants who chair the big committees—Mark Hatfield, Robert Packwood, Nancy Kassebaum, John Chafee, Larry Pressler, William Roth, and Arlen Specter—are cool if not hostile to a major rollback in the federal government.

But even the staunchest Senate conservatives have tasted the joys of the status quo. "This is going to be very tough politics for these guys for the first time," says a Democratic committee aide. "They've always had it easy going around saying the government's the problem, and yet when it comes down to brass tacks, those guys are parochial politicians just like everybody else up here."

He recalls an episode in the transportation committee when the administration laid out plans to cut Amtrak. Mississippi's Trent Lott, the GOP whip who won the job on the strength of his conservative credentials, "all of a sudden discovered that there was an Amtrak line going from Chicago to New Orleans, and guess where it went through," the aide recalls. "All of a sudden he said, 'Well now, you guys have to work with us. You're springing this on us,' and he was back pedaling like mad. All these years conservatives, including Lott, have been saying, 'Amtrak, that's socialism.' So it's going to be tough going for them."

"All these years conservatives have been saying, 'Amtrak, that's socialism,'" says a Democratic committee aide. But when GOP Sen. Trent Lott discovered an Amtrak line ran through his state, he tried to save it.

One little corner to watch this summer, the Democrat suggests, is LIHEAP, the low-income energy assistance program, a relic of Jimmy Carter's disastrous reaction to the "energy crisis" of the 1970s. LIHEAP pays the utility bills of an extravagant number of New Hampshire residents who will vote in the bellwether GOP presidential primary.

"We're going to watch what Mr. Gramm and Mr. Dole and Mr. Specter have to say about LIHEAP," the aide says. He says he knows what New Hampshire Republican Judd Gregg will say, "because we went through this last year," when the administration proposed reducing LIHEAP. "Judd Gregg and Trent Lott said, 'Oh no, no, no, you can't cut LIHEAP.' LIHEAP also goes for air conditioning in Mississippi, and they said, 'Oh, no, no, no, you can't do that. This is an important public program.'"

Rolling his eyes at the mention of LIHEAP, a GOP staffer acknowledges the inconsistency. "The word *courage* is a political cliché," he says, "but courage is really what they need right now."

Even the 73 vaunted GOP House freshmen at the vanguard of the revolution understand the value of pork. The day after the $189-billion tax cut in the Contract with America passed the House, Andrea Seastrand, a grass-roots conservative from California's central coast, faxed dual press releases: "Seastrand Praises Middle Class Tax Relief Bill," and "Niblick Bridge Survives: Seastrand Fights to Keep Money for Paso Robles Bridge Expansion."

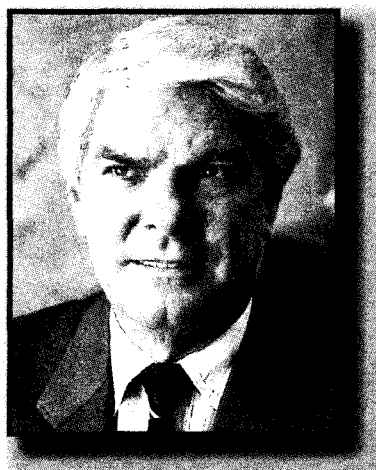
That little bridge happens to be the same one that sparked a citizens' rebellion when the Paso Robles city council first proposed paying for it years ago through a colossal tax on local prop-

CHAS GEER

erty owners. So the city council turned to Congress, which stuck the tab with federal taxpayers, in Iowa and other far-flung places, who will never cross the Niblick Bridge.

Such are the homely illustrations of the great forces that built the New Deal, the Great Society, and other 20th-century versions of socialist democracy. They will not die easily.

UCLA economist William Allen, now retired, often made the point that socialism leads to two things: poverty and tyranny. The extent will vary depending upon how far the experiment is tried, he said, but the direction always holds. Yet while the invisible hand of the market produces a better if not perfect outcome, Allen noted that free markets lose in the political arena, precisely because the invisible hand is invisible.



House Appropriations Chairman Jerry Lewis warns that if the GOP fails to balance the budget but manages through small cuts to anger a passel of constituencies, "We could be laying the seeds of political disaster."

The hand of government, by contrast, is nothing if not visible. Its actions are advertised by every politician. Advocating a hands-off policy seems a hard-hearted excuse to do nothing about grievous social problems. That government usually creates further problems while failing to solve the first one matters less than that it tries.

Then there is the modern secular theology of compassion, which trades in Mother Teresa's philosophy for Ted Kennedy's. While the old Catholic nun labors in the slums of Calcutta, the U.S. senator ministers to the poor from the marbled Senate offices of the Russell Building without ever getting his hands dirty.

Senatorial compassion conveys a sense of spiritual well-being not only to those who exercise it, but to those who support it. Government good works offer more than the ostensible aid they lend to the needy; they also allow people to feel good about themselves by voting for the politician who donates tax money to good causes. Like market successes, however, the policy failures that result are often hidden within the larger milieu.

Still, despite such powerful forces, the outlook is hardly all bleak for the GOP agenda. The House's success with the Contract with America—a sweeping package of tax cuts, welfare reform, tort reform, regulatory reform, and congressional reform—was without legislative precedent in modern times. Nine out of the 10 items passed, defying earlier predictions among even its supporters.

Democrats were routed so thoroughly that 58 percent of them crossed party lines to vote for the very thing they had said they despised.

The shift in the political discourse and terms of debate has been extraordinary. Democrats seem in shock. At a welfare hearing, Democratic Representative Charles Rangel of New York was amazed that GOP witness Lawrence Mead of Princeton University urged recipients to find immediate work, even at the minimum wage.

"If you're a high school dropout, you don't just pick up *The New York Times* and find out what jobs are out there," Rangel remonstrated. "What should [that person] do, just hit the streets?"

"Yes, exactly," Mead responded.

An energetic and unapologetic conservatism has taken over the House, not only opening debate on matters long bottled up by the old leadership, but demonstrating their extraordinary popularity, even among Democrats.

The change could hardly be more profound. Rather than Chicago Democrat Dan Rostenkowski presiding over his Ways and Means Committee fiefdom, there sits Texas conservative Bill Archer, who not only vows to "pull the income tax up by its roots," but has people believing him.

The ideological division has crystallized and sharpened. The debates reflect real struggles over very different visions. "I have a simple message for the Democrats," Archer declared as he opened the tax-cut debate. "It is not your money. It is the taxpayers' money. It does not belong to the government. It belongs to the workers who earned it."

The '60s-style protests against the changes have generated scant interest. Few even noticed when Patricia Ireland, president of the National Organization of Women, got herself arrested in the Capitol Rotunda during debate on the Republican welfare bill.

Demonstrators bused in by the union-backed Philadelphia Unemployment Project tried to disrupt a welfare hearing but seemed more successful at undermining their supporters. "I do job training," shouted protester Leona Smith. "I teach job training. And there ain't no jobs." They were escorted outside, where they continued their protest on the steps mainly to reporters.

Democrats remain in a highly reactive mode. They protest every cut and defend every program, but suggest no alternative.

They offer only more job training programs that a large body of serious studies shows don't work. They reach for transparent hyperbole, comparing proposals to slow the growth of welfare spending to the Nazi Holocaust. Reductions, they said, will "savage" babies, kids, widows, pregnant women, and the elderly. Are puppies next, one has to wonder? The proposals they do offer often are variations on GOP themes, such as their insistence on workfare.

RICHARD A. BLOOM

Florida Democrat Sam Gibbons, a Great Society architect, finally grew apoplectic, screaming on the House floor, "You all sit down and shut up! Sit down and shut up!"

Republicans have a potent budget weapon in hand, if they choose to use it. If the House refuses to fund a program, or cuts its spending, the matter can end there. The so-called zero-out option grows from the simple constitutional fact that both houses of Congress must approve money for the discretionary programs that Congress funds each year.

"It doesn't matter what the other chamber does, and it doesn't matter what the president does," says House Appropriations Committee Chairman Robert Livingston. "You can't veto a zero."

The power is as old as the Constitution, but Democrats spent their 40-year reign in the House creating programs, not killing them. House Republicans now promise to exercise this enormous power of the purse to roll government back.

House Appropriations Chairman Lewis warns of the danger of timidity. If the GOP fails to balance the budget but manages through small cuts to anger a passel of constituencies, he says, "We could be laying the seeds of a political disaster."

California's Chris Cox, a member of the House leadership, is certain that Republicans learned from the Reagan administration's budget battles, which ultimately succeeded in eliminating just four programs and left federal spending higher than ever. "Nobody likes taking all of the heat for cutting food stamps when in fact, they are still increasing," Cox says. "If somebody is going to be criticized for spending less on food stamps, then by God, we ought to spend less on food stamps."

There is, he said, "a political calculus at work. What will dawn on every living soul in the Republican Party is that it makes no sense whatsoever to take heat for cutting spending while failing actually to do it. The irony is that the viciousness of the attacks from the left in the face of modest trimming of spending growth will in the end virtually require trenchant cuts."

CHAS GEER

Texas conservative Bill Archer not only vows to "pull the income tax up by its roots," but has people believing him. "I have a simple message for the Democrats. It is not your money. It is the taxpayers' money. It belongs to the workers who earned it."

The Senate GOP aide believes his party is riding a long-term rightward shift in the country. Ronald Reagan ultimately lost his budget wars, but he was at the leading edge of that shift, this strategist argues. Still, he concedes, much political residue lingers from 40 years of Democratic control.

"We are talking about huge changes, and big changes like this just don't happen overnight," he said. "Rome wasn't burned in a day." Republicans may, he says, have to regain the White House and consolidate their hold on Congress before they can fundamentally alter the direction of government.

GOP strategists are urging boldness. In a memorandum, Jeff Eisenach, a close adviser to House Speaker Newt Gingrich, said the public first must be convinced that change is vital. Eisenach recommended a "burning platform" message, borrowed from the true story of a man on a burning North Sea oil rig. He jumped hundreds of feet into a freezing ocean littered with burning debris because he knew he would die if he didn't.

In his Senate office, Frist turns to a group photograph that hangs on the wall. "These are people I transplanted back two years ago," the former surgeon says. "All these people have heart transplants or lung transplants. That little baby was five days old when I transplanted him. Then some of these people here are as old as 65." He turns back from the photograph and says, "So to give that up, I need to make sure that we accomplish certain things, and if not, I shouldn't be here."

Even Frank Riggs, a political straddler from California's north coast, a district divided between those who want to cut trees and those who want to hug them, voices stoic commitment. Defeated after his first term when Clinton won in 1992, he signed the Contract last September and regained his seat in November's GOP tide.

"I've gone through what I call a political near-death experience, and it's truly emboldened and liberated me," Riggs says. "There is life after Congress, and politics should never be the be all, end all. And I believe, to my core, what Henry Hyde [the Illinois Republican who chairs the House Judiciary Committee] told me when I first came back here: that in politics, there are things worth losing for."

The most important thing Republican budget cutters have on their side may be the budget's own naked reality. "My hope is that when the American people are faced with the reality of the problem, they're going to decide that this has to be done," says Danforth. "We need to go directly to the public and [discuss] what it is we are doing to our children and our grandchildren and to the future of the country. We are doing something terrible."

Danforth concedes that this argument has not resonated with the public before and that it may not resonate now. "But at least we have to raise the issue," he says. "If the issue is raised clearly to the American people, then in a democracy the people decide. And if the people decide we want ours now, take care of us and forget about our children, then at least that is a conscious decision." ®

Contributing Editor Carolyn Lochhead is Washington correspondent for the San Francisco Chronicle.

REWRITING THE CODE

A roundtable on tax reform

For the first time since the Great Depression, congressional leaders are seriously considering sweeping alternatives to the Internal Revenue Code. Two Texans in the House of Representatives are leading the calls for drastic change. House Majority Leader Dick Armey wants to replace the current income tax with a single-rate tax with no deductions other than a generous personal exemption. Ways and Means Committee Chairman Bill Archer would instead scrap the Internal Revenue Code entirely and replace it with a flat-rate national sales tax.

Would either proposal enhance civil liberties and raise enough money to operate the federal government? REASON assembled four knowledgeable advocates to discuss the possibilities.

ART MATSON

No More Kidding Around

By Edward H. Crane

At the end of a brilliant section on taxation from his book *Power & Market*, the late Murray N. Rothbard writes, "Our conclusions are twofold: (1) that economics cannot assume any principle of just taxation, and that no one has successfully established any such principles; and (2) that the *neutral tax*, which seems to many a valid ideal turns out to be conceptually impossible to achieve."

I cite Rothbard's conclusion—which he persuasively develops in the book—by way of disclaimer. I do not *favor* a federal retail sales tax. I support replacing the current Byzantine system of financing the federal government with a federal retail sales tax. I do so for the simple reason that it will make it easier for Americans to reduce their overall tax burden.

We can replace the personal income tax, corporate income tax, inheritance tax, gift tax, and the Social Security payroll tax with a simple federal tax on retail sales and services of between 25 percent to 30 percent. There are economic, civil libertarian, and political advantages to doing so.

Before discussing those advantages, it's worth emphasizing two more disclaimers. First, what we are talking about here is a *complete replacement* of the existing federal tax system. Critics of a federal retail sales tax who point to the danger of politicians simply adopting the retail sales tax on top of reduced rates for the present system have a very legitimate concern. The last thing we should want would be a sales tax in addition to the taxes we already have. The movement for the sales tax must reject any deal that allows the income tax to survive even at one-half of 1 percent.

Second, it must be made clear that we are not talking about a value-added tax. The European experience with the VAT makes it clear how easy that tax is to increase, primarily because it is hidden at the various levels of production. It is true that there will be some problems involved in defining "retail sales," but they are not insurmountable problems. The point is that the retail sales tax will be much more visible than a VAT and, hence, much harder to increase.

A theoretical case for the preferability of a retail sales tax can be made on the basis of the fact that consumption is the purpose of an economy. It is not investment, saving, or even employment. It is consumption. Government lives off of the economy. Let, then, the burden of government fall precisely where the economy is headed: on consumption. Such a tax, while unquestionably damaging to the economy and our standard of living, nevertheless will act to reduce the damage done to the economy compared to other taxation schemes.

A study done for the Cato Institute by Boston University economist Laurence J. Kotlikoff found that replacing the income taxes with a retail sales tax would more than double the savings rate (after all, the whole world outside consumption becomes an IRA), increase the capital stock by a third, and boost national output by nearly a half trillion dollars. One need not accept Kotlikoff's econometric model as an instrument of precision (or even crude accuracy) to see that by eliminating the income and inheritance taxes, including the tax on saving, there is bound to be a huge boost in output and productivity. Entrepreneurial incentives could not be more enhanced within the revenue constraints currently imposed by the federal government.

Thus, on the economic front the retail sales tax is an enormous improvement on the current system. So is Rep. Dick Armey's proposed flat income tax. It has been carefully constructed and, if left alone by politicians, would have virtually the same economic impact as the sales tax.

The problem is—and this is where the civil libertarian aspect comes in—that the flat tax remains a tax on income and keeps in place the Internal Revenue Service. The retail sales tax abolishes both. As the readers of REASON are well aware, there is no more intrusive and abusive agency of the federal government than the IRS. With a staff of more than 120,000 agents and auditors, the very mention of the IRS strikes fear in the hearts of Americans who, in theory, live in the land of the free.

The list of IRS intimidations, civil liberties abuses, snooping, and general ineptitude continues to grow. And for 1995 and 1996 we are promised particularly harsh audits, supposedly necessitated by the estimated $150–$200 billion in annually uncollected taxes.

Civil liberties abuses under the income tax regime are blatant and well documented. We are, for instance, assumed guilty and must prove our innocence when charged with violating the Internal Revenue Code, a code so complex and illogical that the IRS itself only pretends to understand it. The IRS regularly undertakes "civil forfeiture" proceedings that deny Americans their constitutionally guaranteed right to due process of law by confiscating property to pay for alleged (but not proven) tax deficiencies.

Moreover, in a study commissioned for the IRS itself a decade ago, Arthur D. Little Co. estimated that Americans spend some 5.4 billion hours of work a year just to comply with the tax code. Author James Payne puts the cost of those hours at about $250 billion per year, or about one-third of what the federal government hopes to reap from individual and corporate income taxes in 1995. In addition, Payne argues, the true cost of compliance should include the disincentives to savings and work and the costs of enforcement, litigation, and tax-distorted investments. All that could easily double the cost of this bizarre tax system to the American people.

Another benefit of switching from a high–compliance-cost system to a low-cost system is that it would free 120,000 tax bureaucrats and untold tens of thousands of bright lawyers and accountants in the private sector to engage in productive work that increases our standard of living—and would probably make them feel better about themselves, to boot. Flat-tax advocates' arguments that a sales tax would have high compliance costs are disingenuous; 45 states already collect sales tax.

But the best reason to support replacing the income tax with a retail sales tax is political. Today when someone mentions tax reform, Americans wisely grab their collective wallets. The politicians and bureaucrats of the New Class have down to a science the business of playing one tax-paying group off against another:

farmers against manufacturers, rich against poor, old against young, workers against management, and on and on.

The tax system in America is so complex that it's virtually impossible to create a sense of taxpayer solidarity against taxes. Rather, each interest group spends its time lobbying to increase taxes on other groups in the (usually) futile hope that its own taxes can be reduced. That the complexity of the tax code is a key to the politicians' ability to continually increase taxes while constantly talking about decreasing them should be obvious.

The federal retail sales tax ends all that. Whether it's set at 20 percent, 25 percent, or 30 percent, Americans need only vote for the candidate who promises to lower it—the most. Suddenly we *do* have taxpayer solidarity. Suddenly, with no withholding or other hidden taxes, everyone is aware of the cost of government every time he or she buys a product. Lowering federal taxes suddenly becomes much easier.

The flat income tax was the cutting-edge initiative during the Reagan years, and many supply-siders such as Bruce Bartlett, Jack Kemp, and Grover Norquist still support it for that reason. But the mood of the American people is considerably more radical today. They want to abolish the income tax, and it would be a tragic error to allow old political allegiances to get in the way.

The energy behind abolishing the income tax and eliminating the IRS is the same energy behind the term-limits movement: No more kidding around. No more trusting the politicians to do what they say they'll do. After passing a statute, Congress should report out a constitutional amendment, replacing the 16th Amendment and limiting federal revenue to taxes on retail sales and services. The people want to take back control of government and then radically downsize it. That means cutting spending, which first requires cutting taxes, which is what the federal retail sales tax will make much more feasible.

When Sen. Richard Lugar (R-Ind.) campaigns for the presidency on a platform calling for the abolition of income taxes and Bill Archer (R-Tex.), the chairman of the powerful House Ways and Means Committee, says he favors scrapping income taxes and replacing them with a sales tax, you know this is no longer an idea confined to the political fringes.

If mainstream politicians like Archer and Lugar feel that intensity of public support for this idea, the time has come for all advocates of a free society to lend a hand. This is an enormous opportunity to role back the power of government in our lives. It is an opportunity to tell your federal bureaucrat, "Look, I appreciate your interest, but please get out of my face—you'll get yours when I buy something."

Edward H. Crane is president of the Cato Institute.

Killing the IRS

By Daniel J. Pilla

Are you fed up with the annual ritual of gathering bags of receipts, poring through pages of convoluted tax forms, and working into the night on the mind-numbing task of preparing your income tax return? Does the idea of filing your tax return on a postcard appeal to you? Does the thought of an IRS audit terrify you?

If so, you are among the millions ready for a radical change to our tax system. A driving force behind the push is the frustration of dealing with the Internal Revenue Service.

The IRS wields awesome powers. It can execute wage and bank levies, seize property, and obtain your most personal records, all without a court order. Even worse, you are presumed guilty in virtually all your dealings with the IRS; unlike the common criminal, you must prove your innocence. Since our tax law consists of 17,000 pages of regulations, compliance is often an impossible task.

And while the IRS holds the average citizen to inexorably high standards of compliance, the IRS itself doesn't meet the mark. In 1993, the General Accounting Office issued the results of its first audit of the IRS. In testimony to Congress, Comptroller General Charles Bowsher explained that the IRS was unable to account for 64 percent of its $6.7-billion 1992 appropriation. Despite repeated promises to reform, a 1995 GAO report explained that the IRS's own internal audits revealed that its financial statements are "still not accurate, reliable or consistent."

The IRS's inability to manage itself is visited upon the public in a big way. In 1995, the IRS will assess between 32 million and 34 million penalties against individuals and businesses. However, its own annual reports indicate such penalties are wrong about 40 percent of the time. Further, the IRS will issue over 10 million computer-generated correction notices, claiming citizens have made errors in their returns. Numerous GAO reports show those notices are incorrect about 50 percent of the time.

In 1993, the IRS announced a plan to increase its face-to-face audit coverage by 500 percent. This year alone, the number is expected to grow by 100 percent. This explosion is based on the agency's belief that citizens underreport their incomes. Yet its own audit results are wrong about 50 percent of the time.

The average face-to-face audit nets about $5,000 in increased tax and penalties. Thus, the agency's inability to perform its administrative tasks correctly leads to billions of dollars in improper assessments.

As if the ineptitude is not bad enough, IRS invasiveness into private lives of all Americans has reached new heights. Driven by the belief that citizens underreport their income, the IRS announced plans in December 1994 to begin two very troubling programs. The first involves a system of recordkeeping designed to give the agency "on-line access" to records held in all public and private databases.

The agency plans to link its computers with "commercial sources, state and local agencies, construction contract information, license information from state and local agencies...and information on significant financial transactions from reviews of periodicals and newspapers and other media sources." IRS computers will be able to track every financial move of every citizen.

The second program, announced last year, is an audit endeavor known as the District Office Research and Analysis program. DORA audits have little to do with tax returns. Rather, they involve "lifestyle audits." Citizens will be targeted for DORA audits on a random basis, and audit results will be used to develop

statistical formulas to be applied on a broader scale. To ascertain whether someone is living beyond his means and therefore more likely to have understated income, an IRS training manual titled *Components of Economic Reality* instructs agents to evaluate a target's home and neighborhood, furniture and fixtures, educational and personal background, cultural and family background, toys and hobbies, vacations and gifts, clothing and jewelry, and on and on.

Expect auditors to interview one's friends and neighbors, family members and children, business associates and co-workers. The information will then be codified into personal dossiers. The idea is to use the information to catch people in the act of underreporting income.

No doubt such a program will have a serious effect on privacy rights. Without factual justification or probable cause, these are the most deeply invasive investigations imaginable in a free society. Given the IRS's track record of unreliability with its own affairs, these programs are outrageous, indefensible, and dangerous.

Personal freedom and privacy cannot survive in the face of such invasiveness. And a tax law of 17,000 pages is fertile ground for germinating IRS abuse of taxpayers' rights. It seems clear that if freedom is to survive, we must eliminate the IRS.

Alternative roads lead in two directions. First is the flat income tax, under which Americans would pay a flat rate on income without the current confusing myriad of loopholes. Proponents claim the flat tax could be so simple as to allow citizens to file their returns on a postcard. The second alternative is a national sales tax. This system promises to eliminate personal tax returns, as all tax is paid at the checkout counter. Which course should America pursue?

To answer this question, we must first address the threshold question: Under which system will Americans be free of the invasive, capricious, and error-prone behavior of the IRS? This question must guide our debate, and it leads to one inexorable conclusion: Freedom and an income tax cannot co-exist in the same society. One must necessarily drive out the other.

It is inarguable that a flat tax is simpler to report than our current income tax. Preparing a return will be less exasperating if it can be filed on a postcard. But the flat tax still requires the IRS. It requires the filing of tax returns, which can and will be audited. And it requires elaborate recordkeeping by citizens and allows invasive investigations.

Any system which requires IRS administration must necessarily fall under deep suspicion. It is simply unreasonable to ask Americans to submit to the arbitrary whim of an agency which itself cannot perform the tasks it demands of the public.

There is little about a flat-tax system that will trim the staggering cost of tax law compliance. At present, this burden is estimated at $700 billion annually. Much of the cost is associated with recordkeeping and tax law enforcement, neither of which is reduced by a flat tax.

Because it requires a tax return, the flat-tax system cannot eliminate IRS abuse. Though there may be no deductions to audit, the IRS will nevertheless insist on auditing one's income. This is the reasoning behind the outrageously invasive DORA audits. Nothing in a flat-tax system can or will stamp out such abuse.

Because lifestyle audits are so broad, we can expect recordkeeping requirements to increase, not decrease, under a flat tax. Any income tax system is dependent on massive reporting to the government of income information. At present, this is accomplished through the annual filing of some 1.3 billion information returns, such as IRS Forms 1099 and W-2. Since enforcement of a flat tax is dependent upon income information, look for the number to triple as IRS traces every nickel you earn.

There is little about a flat-tax system that will trim the staggering cost of tax law compliance. At present, this burden is estimated at $700 billion annually. Much of the cost is associated with recordkeeping and tax law enforcement, neither of which is reduced by a flat tax. A flat tax certainly involves a simpler tax return, but return preparation is the smallest component of tax law compliance.

The solution to our tax problem is to adopt a national retail sales tax in place of the personal and corporate income tax. Only a sales tax can eliminate the invasiveness of the IRS, since one's income and lifestyle are irrelevant. When one spends money, the tax is simultaneously assessed and collected. That is why only a sales tax can reach the underground economy. The IRS's chief compliance problem is the alleged failure of citizens to report their income. A flat tax will not capture this income because to do so it must be voluntarily reported.

Best of all, a sales tax can eliminate the IRS. The 50 states could collect it in concert with their own sales tax. The federal government would bear the costs but they would be minimal as all but a few states already have a sales tax. For the same reason, virtually all businesses are equipped to pay it. Those businesses which do not now collect a sales tax would still see a reduction in compliance costs because of the elimination of the complex federal income tax laws.

The states would in turn pay the tax to the federal government. This reduces the federal tax collection points from 200-plus million (the number of tax returns filed annually) to just 50.

Only a sales tax eliminates the need for individual audits,

recordkeeping, and enforced tax collection, and it can eliminate the staggering $700-billion annual compliance cost. In short, the national sales tax is the only way to get the federal government out of your life.

Daniel J. Pilla is a tax litigation consultant in St. Paul, Minnesota, and the author, most recently, of How to Fire the IRS *(Winning Publications).*

Flat-Out Better

By Bruce Bartlett

A flat tax gets at the major problem with our tax system, which is that some forms of income are taxed two, three, or more times while others are not taxed at all. We have close to confiscatory rates on some forms of capital income, while labor income in the form of fringe benefits is entirely free of tax.

The best tax reform that could be enacted by Congress would be to adopt the Hall-Rabushka flat-rate tax proposal. Named for economists Robert Hall and Alvin Rabushka of Stanford's Hoover Institution, the Hall-Rabushka proposal was first put forward in a *Wall Street Journal* article on December 10, 1981, and has since been elaborated in three editions of their book, *The Flat Tax*. The most recent edition has just been published by the Hoover Institution Press. Versions of the Hall-Rabushka plan have been sponsored by Rep. Dick Armey (R-Tex.) and Sens. Richard Shelby (R-Ala.), Larry Craig (R-Idaho), and Arlen Specter (R-Penn.).

In brief, the Hall-Rabushka plan would establish a single tax rate of 19 percent on all personal and business income. Businesses would be taxed on their gross revenue less cash wages, salaries, and pensions paid (but not benefits); purchases of goods, services, and materials used in business; and all capital equipment, structures, and land. Individuals would be taxed on their wages, salaries, and pensions received, less a large family allowance. A family of four would have to earn $25,500 per year before it paid any income tax. Note that individuals would pay no tax whatsoever on interest, dividends, or capital gains received. Moreover, the system is so simple that businesses and individuals alike would be able to file their tax returns on a form the size of a postcard.

Although they have always referred to their proposal as a flat tax, I prefer to think of it as a single-rate tax plan. This is because the central element of the Hall-Rabushka plan is to tax all income only once. And it is not truly a flat tax because those with higher incomes will pay higher effective tax rates, although the marginal rate will be the same for all.

The importance of this distinction gets at what I believe is the major problem with our current tax system, which is that some forms of income are taxed two, three, or more times while others are not taxed at all. Thus we have close to confiscatory rates on some forms of capital income, while a considerable portion of labor income—in the form of fringe benefits—is entirely free of tax.

In the aggregate, we tax less than half of all personal income. In 1992, personal income as defined by the Commerce Department came to $5.2 trillion, yet taxable income as defined by the IRS came to just $2.4 trillion. This means that in theory a 9.2-percent tax rate on all personal income would raise the same revenue that the individual income tax raises today at an effective rate of 19.2 percent, with marginal rates between 15 percent and 39.6 percent.

However, the effective tax rate on capital income can go far higher than 39.6 percent. Consider a dollar of increased corporate profit. Looking only at federal taxes, we first take off 35 percent corporate income tax. Then whatever is paid out to the corporation's owners—the shareholders—is taxed again up to a 39.6-percent rate. This adds up to better than a 60-percent tax on the original dollar of profit. But we aren't finished yet, because if the higher profit leads to a higher stock price, we tax that profit again when the stockholder sells his shares, even though the stock price merely reflects the discounted present value of the future profits that are already going to be taxed twice. The capital gains tax, therefore, in effect is a third layer of taxation, going up to 28 percent, on the same dollar of profit. If we factor in state and local taxes and inflation, it is not at all difficult to get tax rates on capital up over 100 percent.

This excessively heavy taxation of capital, combined with widely different tax rates on different forms of income, has created enormous inefficiency and is, I believe, at the root of our economic malaise. We are collecting less revenue for the government at a far higher cost than necessary. The compliance cost of the income tax runs into the tens of billions of dollars a year.

However, the compliance cost is only a small part of the cost we pay for our current tax system. A much larger cost is what economists call the "excess burden" of the tax system. The excess burden is the cost to the economy of reduced work, saving, and investment that is over and above the amount of tax collected. Estimates of the excess burden run into the hundreds of billions of dollars per year.

At first glance, it appears that there is no way the Hall-Rabushka tax system could possibly raise the same $740 billion that the federal government expects to raise in individual and corporate income taxes in 1995. It also appears to be an enormous giveaway to the rich, who now pay rates as high as 39.6 percent on all of their income except capital gains, which are taxed at a maximum of 28 percent.

In fact, the numbers in the Hall-Rabushka plan do add up. And it is not quite the giveaway to the rich that it appears. In return for gaining the ability to expense capital investment, businesses would lose the ability to deduct the cost of fringe benefits and interest. Hall-Rabushka would also sweep away a long list of business tax incentives currently in law. On the individual side, taxpayers would lose the ability to deduct mortgage interest, charitable contributions, and state and local taxes, among other things. Also, keep in mind that while interest and capital gains are not taxable for individuals under the plan, they are taxable at the business level.

The result of all this is to roughly triple current federal revenue from taxing businesses, while halving individual income tax revenue. Since business income largely accrues to the wealthy, the effect of the Hall-Rabushka plan is to raise the actual amount of taxes paid by rich people even as their tax rate falls. And this result does not in any way depend on any "supply-side" effects on economic behavior, although it is clear that there will be a significant impact on saving, investment, and work effort. Economist Dale Jorgenson of Harvard, for example, recently estimated that if something like the Hall-Rabushka plan were enacted by Congress it would lead to an immediate $1-trillion increase in national wealth, which was $19 trillion in 1993 (the most recent year for which data are available).

Unlike the Tax Reform Act of 1986, however, the Hall-Rabushka plan is not a simple trade-off between higher corporate taxes and lower individual taxes. Rather, Hall-Rabushka must be viewed as a fully integrated tax system, of which the business tax and the wage tax are simply two sides of the same coin.

And Hall-Rabushka is by definition a pure consumption tax, because capital investment is fully expensed and because individuals pay no taxes on their investment income. Thus it is unnecessary to institute any sort of specialized saving incentive, such as that proposed by Sens. Sam Nunn (D-Ga.) and Pete Domenici (R-N.M.). Their plan, in effect, would force people to save before they received any tax benefit, whereas Hall-Rabushka simply abolishes taxes on saving altogether.

As noted earlier, the Hall-Rabushka plan is not the pure flat-rate tax it appears to be. That would require a single rate on gross income, with no deductions at all. The effect of a large personal and family allowance is to create effective progressivity. Under Hall-Rabushka the effective tax rate on wage, salary, and pension income would rise from zero on low-income families, to a rate between 3 percent and 12 percent on moderate-income families, to 16 percent on a family earning $200,000. Rates continue to rise as income rises, although no one would ever pay more than 19 percent.

While there are many other comprehensive reform ideas out there—such as the Cato Institute's sales tax proposal—I believe that the Hall-Rabushka plan is the best one that has been put forward in terms of fairness and simplicity. And it is not a new proposal, but one that has been around for almost 15 years.

It has been the subject of previous hearings in the Senate Finance Committee, the House Ways and Means Committee, and the Joint Economic Committee, and has been discussed in numerous studies and articles. Consequently, it is a plan that is familiar and well vetted. Thus, rather than reinvent the wheel and try to come up with an entirely new reform proposal, I recommend that the Congress simply adopt the Hall-Rabushka plan.

Bruce Bartlett is a senior fellow with the National Center for Policy Analysis. He was previously deputy assistant secretary of the Treasury for economic policy. As deputy director of the Joint Economic Committee, he organized the first congressional hearing on the flat tax in 1982.

Taxes We Can See

By Grover Norquist

It spoke volumes about the revolutionary expectations of the American people and the Republican Congress that only days after the Republicans won a majority in the House and Senate on November 8, public debate shot past the already ambitious Contract with America to plans for radically restructuring the federal income tax.

Public cynicism might well have dwelled on the difficulty of moving a balanced budget amendment, line-item veto, tort reform, and term limits through the House, much less the U.S. Senate. Yet as unlikely a Jacobin as Texas's Bill Archer, slated to head the newly Republican House Ways and Means Committee, fast forwarded the political agenda by announcing his desire to abolish the federal income tax, root out the Internal Revenue Service, and replace the present tax structure with a national consumption tax: a sales or value-added tax. Archer's fellow Texan, House Majority leader Dick Armey, has weighed in with his own reform agenda: a flat tax of 20 percent on personal and corporate income for 2 years, to be reduced to 17 percent thereafter.

When facing such obvious injustices as France's *ancien régime*, Russian czarism, or our own 1040 form, men and women of restrained temperament have an understandable urge toward random and immediate violence—and the presumption that the destruction of the present unsatisfactory oppression could only be followed by something better. But the French and Russian revolutions remind us that it is indeed possible to move from bad to worse.

Should friends of liberty in America rush to embrace radical reform of the federal corporate and individual income tax? And if so, which plan is better, Archer's or Armey's? Armey would tax "consumed income," exempting savings and investment, capital gains, and interest and dividend income. Unlike the present tax structure, all income would be taxed once and only once. Inheritance taxes would be abolished: You already paid taxes on that money, so it's yours. Armey contends a flat tax of 17 percent that exempts savings would do less damage to the economy, spur job creation, and be seen as fairer and less intrusive.

Archer, however, argues for a national sales tax and gives four imperatives that guide his thinking: First, the new system must not tax savings and investment. Second, the IRS must be abol-

ished. Third, the new tax system must capture the underground economy. And fourth, the tax must be border adjustable (i.e., the tax must be removed from American exports and added onto imported goods and services to American citizens). This, as Pete DuPont has observed, describes not a national sales tax, but a European-style value-added tax. Any sales tax large enough to replace the income, Social Security, inheritance, and gift taxes (all enforced through the condemned IRS) would immediately become a value-added tax since avoidance at the retail level would force tax collectors to move to the wholesale level and backwards through manufacturing, as has happened in every European nation.

In comparing Dick Armey's flat consumed-income tax and Bill Archer's national sales tax/VAT, it is important to begin by outlining just what criteria determine the "best" or least destructive tax.

The most important aspect of any tax is that it be difficult to increase. This means a tax should be visible, painful, and applied equally to all taxpayers. Politicians love invisible taxes. How many times have we heard Ted Kennedy and Dick Gephardt urge that corporations pay more in taxes? Of course, the only way that General Motors gets any money to pay its corporate income taxes—or property taxes and wage taxes, for that matter—is to include the taxes in the price of cars it sells to the public.

The most important aspect of any tax is that it be difficult to increase. A tax should be visible, painful, and applied equally to all taxpayers. Every citizen will know exactly how much he or she is paying with Armey's income tax. A tax bill hidden in a VAT will mask the deadweight cost of the state.

Bill Clinton's 1993 tax hike "on the richest 1 percent" actually raised two-thirds of its revenue from small businesses filing as subchapter S corporations. Thus all Americans pay this "millionaires' tax" when they shop at the grocery store or go to the dry cleaners. Yet Clinton says—and may actually believe—that people don't pay his tax, businesses do.

By contrast, property taxes have the virtue of being paid in lump sum installments—not dribbled out as in a sales tax or withheld like the income tax. It's no accident that the first success of the contemporary tax revolt—California's passage of the Jarvis-Gann Proposition 13 in 1978—was a measure to roll back property taxes. Subsequent efforts to cut income taxes and sales taxes have been less successful, in part because those taxes are less obvious to taxpayers.

Dick Armey's flat tax would abolish withholding and require that all Americans send a check to Washington each month, just as we pay our rent, phone, or utility bill. Now this is creating truly revolutionary conditions. Monthly checks to the feds will be painful reminders of the cost of government. By contrast, the sales tax or VAT will hide the true cost of government. Sen. Dick Lugar (R-Ind.), speaking at the Cato Institute in favor of a national sales tax, was asked how much he paid in local sales taxes last year and he didn't know. Every citizen will know exactly how much he or she is paying with Dick Armey's flat tax. A tax bill hidden in a VAT will mask the deadweight cost of the state.

After visibility and painfulness, taxes should apply equally to all taxpayers—and perhaps as important—be seen to do so. Armey's bill would unify taxpayers by having all taxpayers pay one rate and by eliminating almost all deductions. With its many complicated deductions, one of the problems of the present tax code is that some taxpayers think that they are benefiting from deductions and are "getting away with something," despite their heavy tax burden. A flat tax not only puts all taxpayers in the same miserable relationship with the state but also lets taxpayers feel confident they are all in the same situation.

To the political class, the greatest virtue of the graduated or progressive income tax is that it allows politicians to divide taxpayers into discrete groups that tax increasers can target and mug one at a time, rather than having to take them all on at once. Bill Clinton worked hard at this, telling Americans, "Pay no attention to my little tax hike, I'm only going after the top 1 percent." The taxman's strategy is to divide and conquer, a little bit at a time.

Such a ploy works extremely well. The business community remains quiet when the personal income tax is raised or inflation shrinks the value of personal and dependent exemptions. Then individual taxpayers remain inert when business taxes are raised. Politicians such as Clinton and Gephardt even play to class envy, urging one group of income earners to hold the politicians' coats as they expropriate another.

In Massachusetts, the establishment left has tried five times through the constitutional initiative process to repeal the present requirement that the state income tax have one rate. Those who want higher taxes and more government know they cannot raise the income tax as high as they would like if they must face all taxpayers at once. Offered the chance to see "average taxpayers' taxes fall while the rich pay more," Bay Staters have rejected the siren call of envy. Dick Armey, in fact, may want to take a cue from Massachusetts and codify single-rate language in the Constitution.

When it comes to treating everyone equally, Archer's sales tax/VAT has no advantage over the present income tax. Every VAT in Europe has multiple rates. Politicians extort campaign funds from cowed industries that fear having their products taxed more or that want their product exempted from the

VAT. Products are labeled "necessities" or "luxuries," and taxed at politically determined rates. In America, we already have politically driven multiple rates on sales of goods and services such as tobacco, alcohol, and hotel rooms. Sen. Daniel Moynihan (D-N.Y.) has suggested a 10,000-percent tax on gun ammunition. A national sales tax would politicize the "virtue" and "sinfulness" of every product and service in America.

The progressive or graduated income tax divides Americans by income class and treats them differently, just as racial preferences—whether old-style Jim Crow laws or new-style affirmative action—divide Americans by race. And for the same reason: so we can be divided against each other by the state. It is no coincidence that the graduated income tax and racial preferences are collapsing at the same time. Americans wish to be treated equally before the law. This is neither South Africa nor East Germany, despite the best efforts of Clinton and Gephardt to divide us against each other, first by race and then class.

There's another reason to be wary of a sales tax or VAT: Canada, Japan, and every European nation have a national sales tax or VAT *and* a personal income tax *and* a corporate income tax *and* wage taxes. In fact, it has long been a goal of the Democrat party to add a VAT to our present tax burdens. I remind readers that Hillary Clinton has three times argued for a VAT to pay for her German-style government-run health care plan. As further proof, remember that Bill Clinton has three times denied such plans for a VAT.

It is inauspicious that both Bill Archer and Dick Lugar have refused to insist that the 16th Amendment, which allows the federal income tax, be repealed before any national sales tax or VAT is introduced. To implement any consumption tax without first repealing the 16th Amendment is a guaranteed recipe for disaster. Honest supporters of a VAT as a replacement to the present tax must insist both on repeal of the 16th Amendment as the prerequisite for any new tax and on a constitutional prohibition to the return of any income tax. Given the present courts, I despair that even this would save us from Europe's experience, where politicians in every case have used tax reform impulses to saddle their citizens with both taxes.

Tax reform should not blind us to the true battle: the total size, scope, and power of the state. The total tax burden, not simply how it is carved out of our lives, is the target. Perhaps the most important tax reform measure is the Barton Amendment urged by freshmen Reps. John Shadegg (R-Ariz.) and Linda Smith (R-Wash.) to require a three-fifths vote of both houses to raise or introduce any tax. Speaker Gingrich has promised a vote on this amendment on April 15, 1996, and if it doesn't pass then another vote will be held on April 15, 1997—conveniently after the 1996 elections.

All tax reformers should support this amendment—or preferably one that requires a two-thirds supermajority to raise taxes, as is the case now in Arizona, California, and the state of Washington, and may soon be true for Ohio, Florida, and Nevada.

Strategically, friends of liberty should support the Republican efforts to cut taxes and spending at the same time. Linking budget cuts with the $500-per-child tax credit and cuts in the capital gains tax and inheritance tax builds public support for both budget cuts and tax cuts. Let's ratchet down the state, cutting back spending and handing the savings back to Americans in tax savings.

In this process of reducing government, every tax cut is a good tax cut. Mae West made a similar observation about sex. Let's work together to reduce the total tax burden, to protect Americans against a political class that would divide us to better loot us, recognizing that there is no good way to rip 20 to 25 percent of the economy away from those who earned it to be distributed by the political class to those who vote for it.

Asking Americans to choose the best way to be taxed—rather than focusing on reducing total taxes—is too reminiscent of the "choice" the state of Utah offered Gary Gilmore: hanging or shooting?

Grover Norquist is the president of Americans for Tax Reform.

Edward H. Crane Responds

It's important to keep in mind that the flat income tax being proposed by Dick Armey, based on the research of Hall and Rabushka, is actually a consumption tax. Neither Grover Norquist nor Bruce Bartlett dispute this fact. Thus, the economic impact of both the flat tax and the federal retail sales tax would be the same. That impact, of course, would be enormously positive when compared to our present tax system. So, as I mention in my essay, the issue isn't economics. It is politics and tactics.

There's a little dissembling going on when Grover Norquist consistently uses the VAT and a federal retail sales tax interchangeably. They ain't the same thing, and Grover knows it.

Of course, you could argue (and Norquist does) that a retail sales tax will inevitably become a VAT. But there's less reason to expect that to happen than to expect a flat tax—Bartlett points out that it's not really a flat tax even at the outset—to be twisted and molded into something that looks a lot like what we have today. In either case, it would be best to eventually back up a statute with a constitutional amendment.

One other point. Norquist had better dust off his copy of *Power & Market* if he actually thinks business income taxes are paid by consumers. They are paid by the owners of the business. The notion that prices are determined by costs, which are easily passed on to consumers, is nonsense. Supply and demand determine prices. Consumers couldn't care less how much it costs for a business to produce a product or how much in the way of taxes it pays.

Back to the issue of politics. As Dan Pilla points out, getting rid of the IRS is an appealing aspect of the sales tax. This is not an agency that spends a lot of time reminding its employees of the Bill of Rights. If we can fund the federal government without it, by all means, let's do it. Flat-tax advocates posture that the retail sales tax will necessitate hordes of revenuers swarming over the landscape to keep shopkeepers from breaking the law. That 95 percent of retailers willingly comply with state retail sales tax requirements already is apparently inconsequential.

But even if there was some problem with collections—and

with taxes as high as they are, we could expect some—it's unlikely that missing taxes under a national sales tax would exceed the $150 billion that annually escapes the feds now. Besides, whatever sales tax enforcement agency would be created, it would not be going into your home to discuss every aspect of your personal and business life. *How much money you make and how you make it would then be no business of the federal government.* Actually, since the vast majority of states that have an income tax depend on the IRS to enforce compliance at the state level, most, if not all, would switch to a sales tax or increase their current one. Income taxes would be abolished throughout the land.

Moreover, politics in America would forever be changed. The psychological impact of living in a society where it was none of the government's business how much money you made—where your paycheck reflected exactly what you earned—would be huge. It would change people's attitudes on all public policy issues to remove the intimidating and paternalistic Internal Revenue Service from people's lives.

Finally, public support for abolishing the income taxes is at an all-time high. When columnist Jack Anderson asked readers of *Parade* magazine to write in and tell him if they would like to replace income taxes with a federal retail sales tax, some 40,000 did. And 97 percent of them favored the retail sales tax.

Daniel J. Pilla Responds

The chief opposition to the sales tax is the claim that due to evasion, it will quickly degenerate into a European-style value-added tax (VAT). All agree VATs are inefficient, hidden, and to be avoided.

The argument that a sales tax will mutate is simply not supported by the American experience. Forty-five states now have a sales tax. In no case has it transmogrified into a VAT. Moreover, the present system creates an incentive for a merchant to engage in sales tax evasion with a customer. When a product is purchased "off the books," the customer evades the sales tax, and the merchant evades the income tax. If there is no income tax, the merchant loses his primary incentive to aid in sales tax evasion. He is not as likely to abet evasion when the risks are his but the rewards are not.

Please note: Evasion is greatly reduced when the public perceives the tax rate is reasonable, and the system itself is fair and simple. Hence, as the overall tax burden falls, evasion falls. This is precisely why it is critical to eliminate existing federal taxes in favor of a single national sales tax.

The average American family today pays 15-percent income taxes. Social Security tax, not including the employer's matching share, is 7.65 percent. Thus, to purchase a $10,000 automobile, the average family must earn $12,265 (not counting state taxes). Now, consider that business taxes and compliance costs amount to 15 percent of a car's purchase price. Get rid of those costs and the car costs $8,500. By eliminating other federal taxes and going to a 25-percent retail sales tax, the average family would have to earn $10,625 to purchase the same auto—a $1,640 savings.

The Armey plan also seeks to eliminate wage withholding. It would require us to send a check to Washington each month. Grover Norquist suggests payments will "be painful reminders of the true cost of government." True, but they will also remind us of the continuing presence of the IRS. And, in fact, IRS records show about 3.5 million citizens annually cannot pay what they owe, regardless of how simple it is to file a return. To collect, IRS executes 3 million to 4 million wage and bank levies, and files about the same number of tax liens.

A flat tax coupled with no withholding creates a compliance problem unheard of in any sales tax environment. It turns loose tens of thousands of IRS collectors on the public. A system designed to remind us that taxation is painful will become a collection nightmare for millions.

Norquist suggests that a flat tax puts "all taxpayers in the same miserable relationship with the state." I fear this is true, as the IRS is preparing for draconian enforcement measures even now. Overreaching IRS procedures will flourish under a flat tax. Our challenge, however, is not to put all citizens on equally miserable footing. Our challenge is to free all citizens from the misery inflicted in the name of taxation.

The biggest single advantage of the sales tax, apart from eliminating the IRS, is simplicity. This is lost with the flat tax. Advocates claim both businesses and individuals will be able to file flat tax returns on a postcard. However, Bruce Bartlett's remarks betray this claim.

He acknowledges that businesses retain substantial deductions, including, "wages, salaries, and pensions paid (but not benefits); purchases of goods, services, and materials used in business; and all capital equipment, structures, and land." It is no easy matter to account for these expenses. It is even more difficult to persuade error-prone IRS examiners that one's own calculations are accurate.

Also consider that withholding of income tax ceases under the flat tax, but withholding of Social Security taxes does not. Consequently, every business with employees must continue to withhold, make regular deposits of the tax, and file five employment tax returns annually.

According to the IRS's 1993 Annual Report, nearly 29 million such returns were filed, at tremendous cost. The IRS assessed nearly 11.5 million penalties in connection with those returns, at a direct cost of over $3.5 billion. Nothing in the flat tax proposal eliminates this albatross.

In sum, the claimed benefits of a flat tax are non-existent. Only a national sales tax provides the kind of relief needed. We all recognize a reduction in government is a key element in the tax reform debate. A sales tax provides a unique advantage in this regard. If funded through a sales tax, government has a vested interest in keeping its hands off the economy and out of people's pockets. As the economy grows, government's share of the pie grows.

Conversely, the flat tax is still an income tax and carries with it the unarguable reality that it penalizes growth. That is precisely why our founders used consumption taxes as the primary means of funding government. Alexander Hamilton rejected taxing "the articles of our own growth and manufacture" as they are "more

prejudicial" to the economy than consumption taxes.

And indeed, income is the most basic element of the "articles of our own growth and manufacture."

Bruce Bartlett Responds

Dan Pilla and Ed Crane both favor a retail sales tax to replace the current federal tax system for one basic reason: It will cause the IRS to vanish. Unfortunately, it will not, for a number of reasons.

First, a federal sales tax will require too high a rate. Crane says a rate of up to 30 percent would do the job. My own calculations put the figure at a minimum of 32 percent. International and state-level experience indicates clearly that sales tax rates much above 10 percent cannot be collected due to massive evasion.

Second, to get the tax rate as low as 32 percent assumes that all services will be taxed. In other words, we are not just adding to the prices of goods at the checkout, but to every service we consume as well. These services include legal, medical, funeral, utilities, video rentals, racetrack wagers, airline tickets, movie tickets, plumbing, school tuition, telephones, rent, and many others too numerous to mention.

Simply eliminating the necessity to file income tax returns will not relieve all taxpayers of IRS-like audits. Every business, including all self-employed workers, will still be subject to audits to ensure that the necessary sales taxes have been paid on their production.

Again, experience at the state level and in foreign countries indicates that such comprehensive taxation of services with a retail sales tax—as opposed to a value-added tax (VAT)—is impractical. This is why almost all states exempt most services from sales taxes. Also, political resistance to taxing services tends to be strong. In fact, a recent effort to comprehensively tax services in Florida had to be repealed shortly after it took effect.

Third, there is a serious problem with intermediate goods and services—those resources used in production—under a sales tax. For a sales tax to work properly, intermediate goods and services must be exempted from the tax. Otherwise, you get what economists call "cascading," where taxes are levied on top of taxes. This is very inefficient and forces companies to vertically integrate in order to prevent it.

Fourth, eliminating federal income taxes will not relieve taxpayers of the necessity of keeping records, filing returns, or being audited. This is because 44 states have income taxes. Thus, most of us will still have to suffer all the invasions of privacy and other indignities that Crane and Pilla wish to save us from, but from our state governments rather than the federal government.

Fifth, simply eliminating the necessity to file income tax returns will not relieve all taxpayers of IRS-like audits. Every business, including all self-employed workers, will still be subject to audits to ensure that the necessary sales taxes have been paid on their production. This will affect upwards of 35 million Americans.

Sixth, someone will still have to collect the sales tax. Proponents of the sales tax, such as Sen. Richard Lugar, have said that the states will collect it for the federal government, since most already have sales taxes. Leaving aside the fact that this country tried that once during the Articles of Confederation and it didn't work, there are continuing problems with this idea:

- It assumes that the states will do the collection willingly and not cheat the federal government.
- It ignores the fact that states will need to be compensated for collecting these taxes. Studies suggest that this will require at least a 1 percent higher rate for this purpose.
- It assumes that the states will keep their sales taxes. In fact, given the costs and burdens of facilitating a national sales tax, all would quickly abolish their sales taxes and increase their income taxes to replace the revenue, thus eliminating the sales tax collection machinery. States without income taxes would immediately adopt them.
- It ignores the fact that no two states have the same sales tax base, nor is it likely that any state's tax base will be the same as the federal government's. This means that the cost of collecting the tax will be far higher than 1 percent.

Seventh, the problem of relieving the poor has not adequately been dealt with. While there may be some virtue in treating everyone the same—rich and poor alike—there is no possibility that the Congress would enact a sales tax without doing something to reduce the burden on the poor.

Historically, this has been done by exempting certain items, such as food and clothing, from the sales tax. However, exemptions greatly increase the complexity of the tax and the opportunities for evasion. Thus advocates of the sales tax have suggested a rebate mechanism instead. (Studies of the earned-income tax credit—a similar program—show error and fraud rates of up to 40 percent.) A rebate system would quickly turn into a major entitlement spending program running into the hundreds of billions of dollars. And it will also require a significantly higher tax rate.

While there are many other important problems with the sales tax, I will conclude by pointing out that every other major country with a national sales tax, with the exception of Australia, ultimately replaced it with a VAT. This is because a VAT is capable of dealing with the many administrative problems I have outlined. Therefore, I believe that the effort to enact a national sales tax will necessarily be corrupted into a VAT. And, as Ed Crane succinctly pointed out, a VAT would be a disaster.

Grover Norquist Responds

Reading the arguments of Ed Crane and Daniel Pilla, I am reminded why all taxpayers find the present income tax system a threat to American civil liberties and the American economy. The wonderful aspect of this debate on reforming the tax system is that Bill Clinton and those who practice the politics of hate and envy are so isolated from the view of most Americans and are alone in their support of the present system.

So, among friends of liberty and serious critics of the present tax code—with its intrusiveness and economic deadweight—let us revisit the argument for a flat tax on consumed income versus a national sales tax or a VAT.

First, I reiterate that any sales tax of 20 percent or 30 percent will become a value-added tax. Only a VAT would be enforceable. On large ticket items or personal service, the retail sales tax would be easily avoided. There is a reason that every European nation with a significant consumption tax has it in the form of a VAT rather than a retail sales tax. And it is for the convenience of the tax collectors, not the citizenry.

It isn't good news to a self-employed American, the owner of a small business, an independent contractor, or a home-worker to be told that "you" will do all the federal government's tax collecting from now on, rather than you and wage earners.

Second, the idea that a shift to a national sales tax/VAT would free "us" from the burden of paperwork, intrusive government oversight, and forced labor to calculate the amount of tribute sent to Washington, D.C., assumes that none of "us" run businesses or are self-employed. If all service producers and all sellers of goods must calculate their value added or their sales prices and collect and remit taxes, this requirement would hit well over 20 million American small-business owners.

I have always looked forward to the day when most Americans would be "self-employed" and contract for their own services rather than serving as paid staff to a company. The self-employed would be more numerous today if not for archaic and doomed laws written for the benefit of labor union organizers. It isn't good news to a self-employed American, the owner of a small business, an independent contractor, or a home-worker to be told that "you" will do all the federal government's tax collecting from now on, rather than you and wage earners.

Karen Kerrigan, the president of the Small Business Survival Committee, reminds us that "small businessmen and taxpayers are allies in fighting against big government and big government intrusion. Why would some work so hard to saddle small businessmen with all the burdens of ripping resources out of the real economy and sending them to Washington, D.C.?"

Third, the sales tax fails the test of making the total tax burden clear. Pop quiz: How much, gentle reader, did you pay in your state sales taxes last year? How much in federal excise taxes on your phone bill, tires, cigarettes, liquor, etc.? Yet I bet you could look up your federal income tax burden within minutes.

Fourth, the sales tax fails the test of making the tax painful to pay and painful to raise. On small purchases, the sales tax would be hidden in the price of the good or service. On large purchases, the sales tax would be avoided—which is why the government would do what every other nation in the world has done: turn the sales tax into a VAT. For example, if a car is only taxed at the "retail" level, clever people would figure out how to buy at wholesale. Only by taking at all levels of production—i.e., a VAT—can the tax collector be sure that taxpayers don't go around retail outlets to do their purchasing tax free.

Fifth, the advantage of the flat tax of uniting all taxpayers in opposition to tax hikes and in support of tax reduction would be lost by a sales tax/VAT. Today's national sales taxes or excise taxes on cigarettes, liquor, tires, gasoline, guns, aviation fuel, and phone bills already are all set at different rates. At the state level, some items are exempt from state sales taxes, others included.

In Europe, the VAT discriminates among product categories. Some are exempt. Some are taxed as necessities. Some are taxed as luxuries and all at different rates. Wait until the environmentalists get to tax recyclable and non-recyclable materials at different rates. All "social costs" can be "internalized" in an industry by setting different rates. Packaged-goods manufacturers can pay for landfills and recycling programs. Guns and ammo taxes can pay for hospital costs for gang members. Snack foods can pay for health care. Cigarettes can pay for anti-smoking ads (as they already do through a special sales tax in California). Target an industry. Come up with a "worthy" spending program. And you're off to the races.

Such differential rates are a gold mine for politicians. Every year some industry would be threatened with an upgrade from necessity to luxury. If campaign contributions are sufficiently forthcoming, no change. If not, *zap*. And some industries and products would be offered lower rates in return for—yes, you got it—campaign contributions. The income tax has no such ease of targeting whole industries or portions of production.

Lastly, the greatest danger of moving to a consumption tax of any kind—whether a national sales tax or a VAT—is that it risks saddling the American taxpayers with what our European brethren have sadly suffered: *both* an income tax and a national sales tax/VAT. No imagined benefit of the sales tax is worth this risk.

Borders Patrol

Book sales are surging. Superstores are booming. And the American Booksellers Association doesn't like it.

By Nick Gillespie

Simone Wallace can appreciate the vagaries of retail competition, even if she doesn't exactly have the time or the inclination to relish their nuances. Wallace is co-owner and co-founder of the Sisterhood Bookstore, a small (1,200 square feet) but impressive Los Angeles shop that specializes in women's studies, gender issues, and feminism. Over the past 23 years, the store had developed a steady and appreciative clientele.

Then, last fall, the nightmare that troubles the sleep of small bookstore operators across the nation suddenly came to life for Wallace: Directly across the street, a two-story Borders Books and Music superstore opened for business. The new store casts a long shadow, literally and figuratively. Look out the entrance to Sisterhood and all you see is Borders.

Borders is one of several national bookselling chains that are rapidly transforming the American bookstore from a quaint, genteel establishment into an expansive, book-lover's pleasure dome. The typical Borders store, says Dan Conetta, vice president of marketing for the Ann Arbor, Michigan-based company, carries 120,000 book titles and more than 2,000 magazines. The L.A. store is bigger still: It fills 43,000 square feet, boasts over 140,000 book titles, plus 50,000 music selections, a coffee bar, live music, reading groups, a carpeted play room for toddlers that's filled with toys and stuffed animals, and free underground parking. As one awestruck woman put it on the store's opening day: "This is the Disneyland of bookstores."

So far, Sisterhood has managed to keep pace, if just barely. Since Borders opened last October, Wallace says, "Business has been flat. Sales aren't up or down. We're working three times harder, though, and since we're not making more money, we can't afford to hire more help.

"In some ways, though, [the competition] has been positive," grants Wallace. Sisterhood has responded by increasing the number of author signings, creating a frequent-buyer program, sending articles and press releases to the local papers, attending conferences and seminars geared to their stock, and beefing up their textbook sales at nearby UCLA. Sisterhood's customers, she says, are definitely benefiting from the innovations born of the looming presence across Westwood Boulevard. Still, the competition is taking a toll. "I don't know if having stressed workers who are working many more hours is good for morale. Our quality of life is going down," says Wallace.

The cavalry, however, is charging into this particular retail war on behalf of independent bookstore owners. Last May, the American Booksellers Association, a trade association that represents over 4,500 bookstores—chain and independent alike—filed a federal antitrust lawsuit against four U.S. publishers. The suit claims that Houghton Mifflin Company, Penguin USA, Rutledge Hill Press, and St. Martin's Press are violating the Robinson-Patman Act of 1936 by granting "unfair" and "illegally preferential" volume discounts and promotional allowances to national bookstore chains and "warehouse buying clubs." A fifth publisher, Hugh Lauter Levin Associates, was named in the original suit but reached an out-of-court

settlement in February. David Kaye, general counsel for St. Martin's, dismisses the suit, saying, "I think it's all bullshit."

While the lawsuit may help independent bookstores secure through the courts what they may be losing in the marketplace, it is unclear that bookstore *customers* will benefit from the legal proceedings. Indeed, the ABA case appears to be an object lesson in how antitrust laws are used to protect embattled competitors rather than benefit consumers. As economist Paul Samuelson—hardly an enemy of antitrust legislation—has written, Robinson-Patman "make[s] competition more *im*perfect....Instead of concentrating on bringing [prices] down for the consumer, it concentrates on keeping many firms in business, even though some may be inefficient."

The ABA lawsuit shares many of the same issues with a recent Federal Trade Commission investigation charging HarperCollins, the Hearst Corporation, Putnam Berkley, Random House, Simon & Schuster, and Macmillan with giving illegal discounts to chain stores. The FTC investigation team, which started its work in 1988, reached an agreement with the publishers in 1992, but the terms have yet to be approved by the full commission or made public.

Under Robinson-Patman, whenever a seller offers a similar product to various buyers, any difference in price—including volume discounts—must be "economically justified" and extended to all buyers on a proportional basis. Otherwise, the seller is considered to be engaging in "anti-competitive" behavior, and a victorious plaintiff can be awarded treble damages. (The ABA, according to Executive Director Bernie Rath, "is not seeking damages, but only injunctive relief.")

Although Robinson-Patman is ostensibly designed to foment competition, it is almost universally decried by antitrust scholars because it severely restricts market forces and effectively punishes successful and innovative firms. By making virtually every price discount and promotional allowance subject to judicial review, it creates an environment in which the benefits of a more efficient retail organization and greater economies of scale can be negated, if not lost altogether in penalties. Robert Bork, for once squarely in the mainstream, has memorably called the act "the misshapen progeny of intolerable draftsmanship coupled with wholly mistaken economic theory. One often hears of the baseball player who, although a weak hitter, was also a poor fielder. Robinson-Patman is a little like that. Although it does not prevent much price discrimination, at least it has stifled a great deal of competition."

And indeed, while the ABA lawsuit names publishers, its real target are the beneficiaries of the alleged preferential discounts—chain bookstores. Although the ABA is quick to characterize the conflict in populist terms—"American culture has more riding on this than any other case I've heard of," says ABA President Avin Mark Domnitz—it is tough to shake the feeling that the legal action has less to do with promoting competition than with preserving the status quo for independent bookstores. "Right now, the independent is in a perfect bind," says Domnitz. "He can not discount, look like a thief, and lose his customers. Or he can discount, lose his margin, and go out of business. Either way, he loses."

"The ABA *should* be working for independent bookstores," says Sisterhood's Wallace. "I think that if there's unfair practices and discounts, it's good that the ABA—to which I pay a lot of money a year—is doing something."

"Among the things that are getting better in America are bookstores," declared columnist and TV commentator George Will on a special segment of the C-SPAN show *Booknotes*. "There's a chain—I don't mind giving them a big plug—called Borders....You go there and you find people who love books."

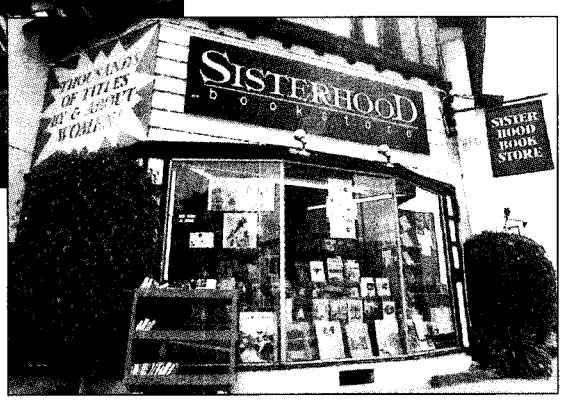
The show's other guests, eminent historians David Halberstam and David McCullough, shared Will's enthusiasm for Borders in particular and contemporary bookstores in general. "I don't know how many voices there are to choose from in a bookstore like Borders. Thousands?" asked McCullough.

"A hundred thousand," said Will.

"It's the most democratic forum," said McCullough, "the most democratic marketplace of ideas imaginable. No civilization has had anything like what we have now."

"The number of serious books we sell today in hardcover, plus the paperbacks, compared to 30 years ago, is a quantum increase," said Halberstam.

In other words, forget about the marketplace of



Since a Borders superstore opened across the street from her L.A. independent feminist bookstore, Simone Wallace says, "Sales aren't up or down. We're working three times harder, though." She welcomes the ABA's antitrust suit.

HOLLY FREEDMAN

ideas—we're talking *supermarket* here. Will and company are absolutely right when it comes to the way books are hawked nowadays: Never have so many books—new and old—been so available to so many people. According to the Book Industry Study Group, retail sales through bookstores increased from 914 million books in 1988 to 1.074 billion books in 1993. Part of the larger market for books is no doubt a function of an increasingly better-educated public.

But there can be little argument that part of the growth is the result of vigorous competition among booksellers, large and small. Indeed, the bookselling business is a case study in varied retailers. Book Industry Study Group data for 1993 show that adults purchased books from a number of different sources, none of which could claim anything close to market domination. (See chart.)

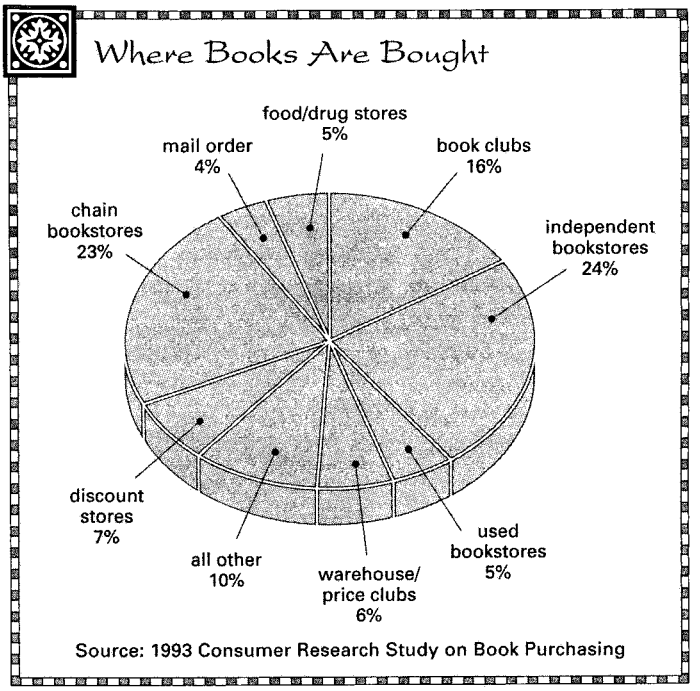
A 1994 study by Denver-based consulting firm G. A. Wright of retailing trends found that from 1985 to 1993, the number of "ultimate companies" (i.e., parent organizations) selling books increased from 9,243 to 19,853. Growth boomed at all levels of economic activity. For instance, while the number of companies with sales over $100 million grew by 200 percent, those with sales up to $1 million—roughly 90 percent of all bookstores in America—increased by 131 percent. The study also found that among retailers, bookstores enjoyed the second-lowest closure rate—1.3 percent. (Used merchandise stores, including such businesses as thrift shops, antique shops, and pawn shops, had a 0.9 percent rate.)

All in all, the findings paint a rosy, if competitive, future for small retailers, including booksellers. The trick is, in G. A. Wright's words, to meet the needs of an "older, affluent, and more diverse population" that is withdrawing from the mass market in favor of the convenience and individualized service that smaller stores can provide. A niche bookshop such as Sisterhood, with its specialized focus, is well positioned for the future.

To be sure, chains have been enjoying the largest growth among bookstores. In the fiscal year ending January 31, 1995, says *Publishers Weekly*, sales in the entire bookstore segment rose by 4.9 percent. But for the top four chains—Barnes & Noble (which includes Barnes & Noble, Bookstar, Bookstop, B. Daltons, Doubleday, and Scribners bookstores), Borders Group (Borders, Brentano's, Waldenbooks), Crown Books, and Books-A-Million—sales rose 16 percent.

And within the chains, the biggest sales growth is in the superstores. Borders' superstore sales, for instance, increased 89 percent over the last fiscal year. The chain currently runs 80 superstores and hopes to open another 30 by 1996. Barnes & Noble, the country's largest bookseller, operates 268 superstores and plans to push the total to 343 by year's end. Superstore sales account for 59 percent of all sales for Barnes & Noble.

By carrying a "tremendous and authoritative stock, creating a browser-friendly atmosphere" (complete with chairs, benches, and cafes), book superstores have become "destination stores," says Barnes & Noble spokesperson Lisa Herling. "They are places where people go to spend time." For the record, she also categorically denies that Barnes & Noble receives special discounts from publishers.



Curiously, superstores downplay pricing as a primary factor of success. While superstores usually discount certain books (Barnes & Noble, for instance, discounts hardcovers 20 percent, *New York Times* bestsellers 30 percent), Herling and Borders' Conetta stress that title base and ambience are what get people to walk through the door.

Those notions seem to resonate with customers. "My husband and I come here with [our 3-year-old daughter] because there's something for all of us to do," Monica, a paralegal in her late 30s, tells me on a recent Sunday at the L.A. Borders. "We can get something to eat, listen to music, browse the store. One of us can stay with our daughter while she plays in the kids' room. It's very convenient." At the Encino Barnes & Noble superstore, Jeff, a computer programmer, says he drops in for the magazine selection. "It's incredible," he says. "You can spend the whole day sifting through them. I probably pick up a couple of different copies every other weekend."

Does Robinson-Patman help a market to function more efficiently? In the words of the congressman who led the fight against its enactment, the act "intended, under the cover of devious but innocent-appearing wording, to assure profitable business to a trade class regardless of the efficiency of service rendered to the consumer." Indeed, Robinson-Patman is an exercise in governmental doublespeak, simultaneously exhorting free market values while effectively outlawing them: In the name of supporting competition, the statute effectively forbids sellers and buyers from jockeying for the best terms possible—that is, from competing.

"The day of the independent merchant is gone unless something is done and done quickly," Rep. Wright Patman of Texas, the act's chief sponsor, declared in a 1935 congressional hearing. "He cannot possibly survive [competition from chains]. So we have reached a crossroads; we must either turn the...business of

this country...over to a few corporate chains, or we have got to pass laws that will give the people who built this country...an opportunity to exist....[The Robinson-Patman Act] has the opposition of all cheaters, chiselers, bribe takers, bribe givers, and the greedy who seek monopolistic powers."

Principal among the cheaters and chiselers Patman decried were chain grocery stores that, because of more efficient purchasing and distribution organizations, undercut traditional food merchants. While consumers benefited from the lower prices (it was, after all, the Depression), competing independent merchants cried foul. Rather than competition, Patman urged "a policy of live and let live" among merchants, big and small. Interestingly, the actual author of Patman's original bill was the counsel of the United States Wholesale Grocers Association, a lobbying group for independent food merchants. Given such history, it's no wonder that, in the words of University of Chicago and Carleton University economist Thomas W. Ross, "[Robinson-Patman] looks less like an antitrust measure than legislated relief for small business."

Robinson-Patman is itself a revision of the Clayton Act of 1914, the first antitrust statute that expressly prohibited certain forms of price discrimination. In an attempt to cultivate competition in a given field, Robinson-Patman prohibits a seller from charging "discriminatory" prices to buyers of goods of "like grade and quality" where the "effect of such discrimination may be to lessen competition or tend to create a monopoly." The prohibition extends to non-price considerations such as promotional allowances, as well. The act does grant the seller the right to vary prices in a "good faith" attempt to match competitors. It also allows for volume discounts, but it mandates that such policies be linked directly to savings in economies of scale. The main enforcer of law is the Federal Trade Commission.

Robinson-Patman's pernicious effect on competition—and its boon to small firms—is illustrated by one of the most famous cases brought under the act, *Utah Pie v. Continental Baking Company*, which was ultimately decided by the Supreme Court. Utah Pie charged that three national frozen-pie manufacturers—Pet Milk Company, Carnation Milk Company, and Continental—damaged competition in the Salt Lake City area by selling pies at illegally discounted prices.

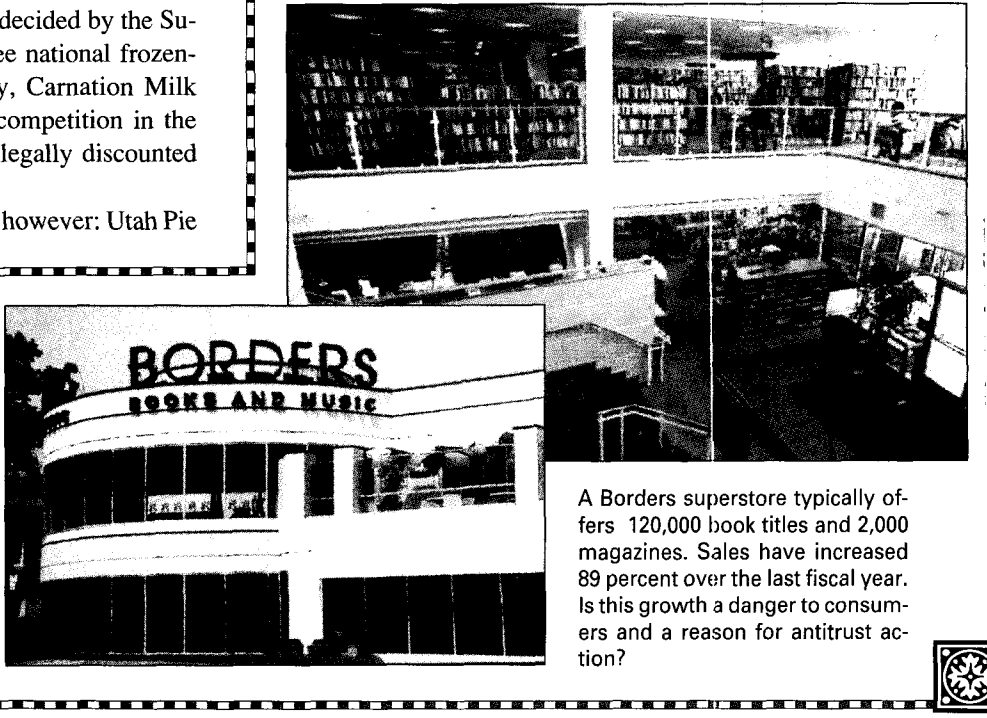
The facts tell a more interesting story, however: Utah Pie entered the pie-selling market in 1957 and, within two years, captured more than 66 percent of the frozen-pie market by building a local plant, trimming transportation costs, and undercutting national competitors' prices. Naturally, Pet, Carnation, and Continental responded by cutting *their* prices. The price war played well with consumers: Between 1958 and 1961, the market for frozen-pies jumped from 684,000 to about 3.2 million. Over the same time, Utah Pie increased its sales volume, consistently turned profits, and, although its market share had dropped to 45 percent, maintained its standing as the area's largest pie seller. But because Pet, Carnation, and Continental were at various times selling pies outside the Salt Lake City area for higher prices, they were found guilty of anti-competitive practices and forced to pay treble damages.

That sort of bizarre outcome is endemic to Robinson-Patman because the law is flawed both in theory and practice, says Marius Schwartz, a professor of economics at Georgetown University who has also worked for the Department of Justice's Antitrust Division and joined the Council of Economic Advisers in June. "Robinson-Patman means that outsiders—the courts, the government—are trying to second guess decisions that are very subtle and require very localized information," says Schwartz.

Schwartz, who supports other forms of antitrust legislation, notes that Robinson-Patman attempts to punish "price discrimination": realizing different rates of return on sales of the same product. But in a fluid market, where prices and costs are constantly changing, that's a virtually impossible task, he says. Since government enforcers can't know when a price is discriminatory, they look for price differences instead.

"The courts," says Schwartz, "have ruled that in the absence of manifest price differences, no Robinson-Patman violations occur. That's stupid—if there are different costs of service to different people, then equal prices can mean discrimination." Such stupidity, according to Schwartz, is compounded because the burden of proof falls on the defendant in a Robinson-Patman case, not the plaintiff.

The implementation problems are even greater when dealing with volume discounts and promotional allowances. "Let's say I sell you three candy bars packaged as one. Maybe there's some saving in wrapping paper or in the cost of answering the order.



A Borders superstore typically offers 120,000 book titles and 2,000 magazines. Sales have increased 89 percent over the last fiscal year. Is this growth a danger to consumers and a reason for antitrust action?

HOLLY FREEDMAN

We could maybe take those savings into account. But a lot of the savings have to do with transaction costs—I don't have to send as many salesmen out to place a big order—a lot of them are overhead costs, so it's very difficult to apportion them to a particular transaction," says Schwartz.

Promotional allowances pose still tougher difficulties, since the returns on such practices are virtually impossible to quantify in any hard-and-fast way. For instance, says Schwartz, it might make sense for a firm to sell to a "marquee" account at a lower-than-average rate of return because the account itself has promotional value. Schwartz points to a 1940s-era case against cosmetics company Elizabeth Arden as the *reductio ad absurdum* of trying to proportion promo allowances. Arden sent beauticians to department stores and bigger outlets to do customers' nails and makeup. Smaller stores demanded proportional terms under Robinson-Patman. "What do you do," asks Schwartz, "Give them a full woman for half a day or half a woman for a full day?"

For Schwartz, the upshot of Robinson-Patman is that it works to weaken competition among firms in a given field, not to enhance it. By giving competing sellers and buyers the right to bring action against one another based on price differences, suggests Schwartz, you limit incentives on the part of buyers and sellers alike to make the most economically efficient arrangements.

To be sure, the ABA insists that what they want is *more* competition, not *less*. And, says ABA President Domnitz, all independent bookstore owners want is a share of what the chains are getting. Domnitz, who is also chairman of Harry W. Schwartz Bookshops, a local chain of six bookstores in the Milwaukee area, spins out a scenario of social and cultural apocalypse highly reminiscent of Wright Patman: "Today, the big corporate store carries a wide inventory because it is competitive to do so. But look down the road and [suppose] that, because of illegal [volume] discounts and illegal promotional allowance payments, the chain corporate stores of this country flourish and put the independents out of business. When there's only two chains left—or one chain, who knows how it might wash out—the decision to carry a particular book no longer [is] a cultural or a competitive issue. It becomes an economic issue and the number of times a book will sell in a given year will become the sole determinant as to whether a book will be carried."

The ABA's attempt to demonize "chain corporate stores" as rapacious profit-mongers and to lionize "independents" as defenders of life, liberty, and the American way is perfectly in synch with Robinson-Patman's tradition, says Donald Boudreaux, associate professor of law and economics at Clemson University. "Whenever technology or organizational innovation changes very rapidly [as is happening in the bookstore industry], a lot of apple carts are being upset. And the people whose apple carts are falling over run to the government and say, 'Look, this is terrible.'"

By the same token, Boudreaux, who considers Robinson-Patman "the worst example of federal antitrust legislation," doesn't find Domnitz's scenario very plausible. For starters, the idea that a bookstore chain or cartel could monopolize the retail market is unlikely, says Boudreaux, because entry into the market is relatively easy and even the threat of potential competition undermines monopoly control. Domnitz's vision of bigger and bigger bookstores offering smaller and smaller selections also ignores what customers prize most about a bookstore: variety.

The ABA's attempt to demonize "chain corporate stores" as rapacious profit-mongers and to lionize "independents" as defenders of life, liberty, and the American way is perfectly in synch with Robinson-Patman's tradition. However the ABA case works out, it will not make the retail book trade more responsive to consumers.

As important, book publishers actually have an interest in maintaining competition at the retail level, says Boudreaux. Although we normally think that publishers sell books to retailers who then sell them to customers, it is more appropriate to look at retailers as providing a service to publishers by helping them sell books, says Boudreaux. "No one who buys a service wants that service to be monopolized," he points out. "Of course, it's possible that publishers are making a mistake when they grant certain volume discounts or promotional allowances to certain stores, but my money is on the publishers rather than the rivals of favored retailers, or judges, or bureaucrats."

For now, however, the future of book retailing rests very much in the hands of judges and FTC bureaucrats. On March 3, U.S. District Court Judge John Keenan denied defense motions to dismiss the case on the grounds that the ABA had no legal standing and that the suit failed to state an actionable claim. The judge found that the ABA's complaint "sufficiently alleges injury" and that the "favored and disfavored purchasers are in direct competition with each other." The judge also denied a defense request that the discovery process be delayed until the FTC decision comes down regarding HarperCollins, the Hearst Corp., Putnam Berkley, Random House, Simon & Schuster, and Macmillan. The discovery phase is set to be completed by November 3.

However the ABA case works out, one thing seems certain: It will not make the retail book trade—already a highly competitive field—more responsive to consumers. Within walking distance of the Third Street Promenade, a pedestrian shopping area in Santa Monica, California, there are no fewer than a dozen bookstores, including several independents and a recently opened three-story Barnes & Noble superstore.

"If I can't find what I'm looking for here," says Jim English, a Los Angeles restaurant worker, standing outside the Barnes & Noble, "I'm sure I'll find it at Midnight Special or one of the other stores down the block."

Nick Gillespie is assistant editor of REASON.

Extreme Prejudice

How the media misrepresent the militia movement

by Mack Tanner

"Who could possibly have done such an evil, cruel act?"

It's a question that we all asked ourselves as we watched the TV images of a demolished building filled suddenly with the dead, the dying, and the terrorized.

Michigan Militia members in training. Their leaders denied any connection to the Oklahoma City bombing.

AP/WIDE WORLD PHOTOS

For a day, reporters and terrorism experts told us the bombers were almost certainly Muslim terrorists from the Middle East. Then the FBI captured a suspect who turned out to be one of our own—not just an American, but one who had served in our military and fought in one of our wars. Shocked that an American could do such a thing, reporters went looking for a bigger story.

The FBI wasn't about to throw the case by talk-

ing details. But the news media needed scary people to show to a public ravenous for answers. So the media told us that the FBI's primary suspect, Timothy McVeigh, and his two alleged co-conspirators, Terry and James Nichols, had some kind of association with something called the Michigan Militia. Then they gave us hours of TV coverage on what they repeatedly described as an extreme right-wing, anti-government, armed-and-dangerous group of paranoid Americans.

Never mind that leaders of two different militia groups in Michigan insisted that the suspects were not members of any militia group, and that indeed, they had been ejected from a meeting because of their extreme and violent talk. The media told us with lots of film clips of Americans training in the woods that the militia movement represents a threat to American society every bit as serious as Middle Eastern terrorists.

Reporters had seemingly reliable sources to back their conclusions. Last October, the Anti-Defamation League and the Southern Poverty Law Center's Klanwatch had issued separate reports warning of the "danger posed by the growing white supremacist involvement in newly formed citizen militias." Both groups had urged Attorney General Janet Reno "to alert all federal law enforcement authorities to the growing danger posed by the unauthorized militias," several of which had allegedly been infiltrated by white racists and anti-Semites.

The national media responded to the two reports with alarm-bell–ringing accounts of the troubling militia movement. These groups, according to press accounts, were preparing for armed clashes with their own government. And even when reporters didn't accuse the militias of violent racism, they described them as "a right-wing counter-culture" of "fearsomely aggressive adherents" engaged in the "politics of paranoia," to quote a *Los Angeles Times* account. Television exposés ran film clips of men and women dressed in combat fatigue uniforms, carrying military style semi-automatic weapons as they trained for combat.

I had learned about the militia movement several months before the Oklahoma tragedy while cruising the Internet newsgroup *talk.politics.guns*. The messages posted there by computer literates explaining and defending the militia movement didn't read like the ravings of white racist paranoids looking for an excuse to go to war with the government. They described the militia movement as a reasonable extension of the philosophy of armed self-defense. If one keeps weapons to protect one's family against the criminal intruder, doesn't it also make sense to prepare for the possibility that the government may turn criminally violent? There are plenty of 20th-century precedents for fearing that might happen in our country, as it has in others.

Of course, such arguments sound rational only to someone who believes that the Second Amendment confirms an individual's unalienable right to own and bear firearms—to someone who believes that an armed citizenry, like a free press, is an important bulwark of liberty. These arguments assume that the Framers of the Constitution intended that armed citizens would serve as the ultimate check on government power. Militia supporters argue that arms are most valuable as deterrents, whether to prowlers or out-of-control government agents.

Hoping to understand the militia movement, I sent a few of my own messages over the Internet. Working from the initial e-mail contacts, I interviewed citizen militia leaders, members, and people friendly to the militia movement in Texas, Michigan, Ohio, South Carolina, Montana, Wisconsin, California, Washington, and my own home state, Idaho. What I learned about the movement suggests that its motivations, members, attitudes, and tactics have been grossly mischaracterized by culturally ignorant reporters more concerned with telling sensational stories than with explaining the more-complicated truth.

Reporters had seemingly reliable sources to back their conclusions about the danger posed by militias. Last October, the Anti-Defamation League and the Southern Poverty Law Center's Klanwatch had issued separate reports warning of the "danger posed by the growing white supremacist involvement in newly formed citizen militias."

To understand what the militia movement is talking about, one needs to understand a bit of federal law. While most of us never think about it—or even know about it—every American male spends 28 years as a member of a militia, whether he wants to belong or not. United States Code, Title 10, Section 311, describes the militia of the United States as consisting of all able-bodied males at least 17 years of age and under 45 years of age. If we are not members of the National Guard, then we are, by law, members of the unorganized militia who can be called to service at any time by the appropriate legal authority.

Any two or more American men can therefore claim to be an association of members of the unorganized militia, just as they might be an association of voters, taxpayers, parents, or citizens. So it's important to make a few distinctions among different kinds of groups of armed citizens who have grievances against the government. These are the critical distinctions that neither reporters nor experts from the ADL and Klanwatch nor representatives of the Clinton administration have been careful to make. Such armed groups and associations in the United States include:

■ *The criminal racists, tax protesters, radical environmentalists, and political groups committed to violent revolution.* These are people with narrowly focused agendas who will deliberately

break the law in pursuit of their agendas. Examples include the Ku Klux Klan, the Posse Comitatus, the Black Panthers, the Weathermen, the Freemen, and some environmental and animal rights groups. Such criminal groups count their members in the tens and sometimes the hundreds, but they seldom grow much bigger. Federal and state police agencies have been remarkably successful in catching and prosecuting these criminals.

■ *Peaceful survivalists, racial separatists, and religious cult groups.* These include Mormon polygamists, the Universal Church Triumphant, Bo Gritz, the Branch Davidians, and similar survivalist groups. Some of them may evade taxes, stockpile illegal arms, home school in violation of state laws, or commit other violations of state and local law, but these people seldom threaten harm to outsiders or commit crimes against their neighbors. They frequently live in enclosed communities, and are often armed and prepared to repel attacks against their sanctuaries. Federal law enforcement agencies mistakenly assumed that the Branch Davidians fit within the criminal category described above, and in doing so, made the Davidians' paranoid nightmares come true.

■ *The loners and the Walter Mittys.* These are angry individuals who personalize their war with government. They tend to be very secretive and demonstrate limited social and employment skills. Occasionally, one of them will try to make his fantasies of glory a reality. When they do, they can cause a lot of havoc and get lots of media attention. Examples include Francisco Duran, who recently shot up the White House; the attackers on abortion clinics; Lee Harvey Oswald; and most mass murderers. Police agencies usually catch these criminals, but like serial killers, they can be much harder to identify than members of criminal political groups. (After 17 years, law enforcement agencies still haven't identified the "Unabomber," who celebrated Oklahoma City by mailing another of his creations.)

■ *The armed, but legitimate, political activists.* This is a new phenomenon, at least in this century. These are socially successful people who respect and obey the law, but who are organizing and arming themselves because they fear they may be attacked by agencies of their own government. It was this new phenomenon, the citizen militias, that drew my interest. Just who are these people?

"One thing we definitely are not are haters of government or haters of law enforcement," Bob Clarke, a member of the Michigan Militia told me a few days after the Oklahoma tragedy. "I have a driver's license, license plates, and I pay my taxes." Like many militia members, Clarke is a devout Christian who educates his children at home. He sees his participation in the militia movement as a continuing part of the Christian life. His reaction to the Oklahoma bombing is no different from any other American's: "Let's get them, find out who did it. Whoever did it is despicable. Any human being has to be appalled."

Clarke, who owns a computer service company, is a fairly typical militia member in both his background and motivations. Contrary to what some left-leaning analysts have claimed, militia members aren't drawn primarily from the ranks of the unemployed and economically disenfranchised. Like Clarke, they are solidly middle class. And, like Clarke, they are driven not by hatred—of blacks, Jews, or even the government—but by fear. They worry that the federal government does not respect the liberties guaranteed in the Constitution and may eventually pose a direct threat to them, their families, and their neighbors.

"First the feds put Rev. Moon in jail for tax evasion," says a militia member. "I thought that was a great idea. Then they went after that guy from India with all those limousines in Oregon, which was OK with me too. But I started getting worried when I learned about what happened to Randy Weaver. When the FBI killed all those people in Waco, I asked myself who they were going to come for next, the Baptists?"

Although they have a host of popular grievances with the federal government—from land-use policies to gun control to just about everything the Department of Education does—militia members are clearly worried most about armed federal attacks. Most of the groups were organized sometime after the events at Ruby Ridge, Idaho, where, in 1992, U.S. Marshals and FBI agents killed Randy Weaver's son and wife, and the deadly 1993 standoff between the feds and Branch Davidians at Waco, Texas.

"First the feds put that Reverend Moon character in jail for tax evasion," Clarke told me in February when I asked why he thinks the federal government is dangerous. "I thought that was a great idea. Then they went after that guy from India with all those limousines in Oregon, which was OK with me too. But I started getting worried when I learned about what happened to Randy Weaver. When the FBI killed all those people in Waco, I asked myself who they were going to come for next, the Baptists?"

"Everybody is afraid of the government," the training officer for a local Michigan unit told me in February. A military veteran and one of several sources who asked that they not be quoted by name, he continued, "Our members see how the press is attacking those who dare to object to what the government is doing. First they demonize you, then they kill you like they did in Waco."

But, he said, "It's not just Waco and Ruby Ridge. We worry

about RICO prosecutions, new restrictions on Fourth Amendment rights, tax seizures, property takings, you name it. But I think the assault weapon ban was more important in getting people interested in the militia movement than anything else. If they take our weapons away, then we have no way to fight to keep all our other rights."

Like ACLU lawyers who rely on the courts or intellectuals and journalists who rely on the press, militia members have a theory of how best to protect American liberties. They believe that maintaining freedom depends, ultimately, on the deterrent of an armed populace.

Nonetheless, says the training officer, "We don't wear our camo all of the time. We are not looking for an armed confrontation if we can avoid it. Every week, we pick a political issue based on what the media is reporting, and we crank out a letter on that issue which each member sends to his congressman or senator." Militia members are fond of saying that Americans' freedom rests on five boxes: the soapbox, the ballot box, the jury box, the witness box, and the cartridge box.

But, as Idaho leader Samuel Sherwood told a March 2 meeting of militia commanders, most militia members believe that "now is the time for ink, not powder." In perhaps the most outrageous example of irresponsible coverage of the militia movement, a local reporter wrote—and *The Wall Street Journal*'s Al Hunt repeated—that Sherwood told his audience to look legislators in the face today because "you may have to be shooting them in the face" tomorrow. In fact, he said just the opposite. In the closing minutes of the meeting, Sherwood made an impassioned plea for using political action rather than violence in correcting the wrongs that the members of the United States Militia Association see in government. He suggested that if his listeners wanted to grab a gun to shoot their legislators, they should first go look them in the face and recognize that legislators are also American citizens who are fathers, mothers, husbands, and wives. The audience not only understood that he was arguing against violence, they applauded his remarks. Unlike *Journal* columnist Hunt, I was actually at the meeting.

Sherwood, who leads the U.S. Militia Association from his home in Blackfoot, Idaho, argues that militia groups should not muster and train as military units except in the 17 states which legalize such activity under the supervision of civilian authority. In Idaho, where law and the state constitution make no provisions for the mustering of the unorganized militia, Sherwood's units meet as political action groups lobbying to allow such mustering.

Sherwood envisions the militia movement developing into a well-trained, self-financed, volunteer force ready to respond to the command of civilian officials in the event of a natural disaster, riot, or armed attack. Like most militia activists, Sherwood favors self-reliance and prefers local to national government. Instead of calling for federal troops (or National Guard units under federal command), he argues that governors, sheriffs, or local county commissioners would be better served if they could call up a volunteer militia unit equipped with personally owned weapons. Ultimately, Sherwood would like to see the United States organize its national defense on the Swiss model, with an armed and trained populace rather than a standing army (except for a few specialized forces to handle, for instance, nuclear weapons). Although units of the U.S. Militia Association do not muster and train in military tactics, at least not in Idaho, every person joining the association agrees to buy a legal semi-automatic assault weapon if he or she doesn't already own one, lots of ammunition, and the field equipment and supplies necessary to respond to a call to arms.

At Sherwood's invitation, I attended the March 2 meeting of commanders of U.S. Militia Association units located in and near Boise. Eighty people showed up at the Boise City and County building, about 30 of them wearing the military-green, mufti-style uniform of the U.S. Militia Association. A number brought their wives and a few, their children. The members ranged from teenagers to an old rancher in his late 70s, who slowly walked on badly bowed legs with the help of a wooden cane.

Idaho Deputy Governor Butch Otter talked for a few moments about how the new Republican government in Idaho was pushing hard to reduce federal interference in state affairs. Unimpressed, the militia members engaged Otter in a vigorous, sometimes angry, 90-minute debate. They did not believe the new state administration was moving fast enough to change federal land-use policies, environmental limitations on the logging industry and private land use, federal regulations on business, and so on. Sounding much like a meeting of Ross Perot's United We Stand America, the militia members stood up to shout out their anger over NAFTA and GATT, Forest Service fire-fighting policies, the "insane" enforcement of the Endangered Species Act, the public education system, the idea that U.N. treaties could override the Constitution, high taxes, and their fears of being singled out by federal law-enforcement agents.

"All they have to do is find certain kinds of chemicals on my land, and they can take everything I own by claiming I'm about to start making illegal drugs," said a man in his mid-60s.

They were angry and strident, but these people did not sound like dangerous radicals threatening to destroy the system. I met computer programmers, owners of small businesses, professionals, writers and artists, salaried employees, and lots of retired military officers, all well established in America's middle class. "Our members are the people who have paid the price of big government but who don't get the benefits," says a leader in Michigan.

One can reasonably ask why these people don't stick to more traditional political action instead of spending so much money buying weapons and ammunition and so much time and effort preparing to fight. Part of the explanation lies in the distinction between local authorities and the federal government.

While the people joining militias hold what have long been minority views on the national level, many of them live where they are in a political majority. They help elect sheriffs, county commissioners, state legislators, and congressional representatives who share their political ideals. But their elected representatives are outvoted in state capitals, and even more often, in Washington, D.C. National leaders elected by voter majorities in

faraway places impose on them laws and regulations that destroy jobs and property values while raising taxes. And, even worse, they pass laws the militia members believe unconstitutional—a category in which they include not only gun-control laws but most regulations and subsidies. This alienation is also the source of their antipathy for international organizations. People who object to politicians from New York City and Southern California telling them how to live in Montana or Michigan go ballistic at the suggestion of a new world order in which officials from China, India, and Canada will make the rules.

And when they hear politicians like Sen. Dianne Feinstein (D-Calif.) make rash remarks about confiscating all "assault weapons," they imagine the federal government, perhaps using foreign troops, launching an attack on them. "The day federal martial law is declared is the day the militia will deploy as an armed, fighting force ready to repel invaders, be they the federal government or foreign troops," says the Michigan-unit training officer. If that ever happens, he expects to be fighting side by side with state and local leaders he helped to elect.

Most of the time, however, the militia members aren't exactly preparing for war, though their meetings often have a survivalist air. The Michigan-unit training officer explains that his unit meets twice a week. They have an advertised meeting on Fridays where different speakers discuss and interpret events in the news. Around 100 people come out on a regular basis.

On Tuesdays, they hold an unadvertised meeting for active members and friends. "It's a core group of about 20 people," says the officer. At this meeting, members learn emergency medical treatment (taught by members of the local fire department), map reading, radio communication skills, family care, water purification, and food preparation using items that can be stored for long periods of time. Recently, he says, 40 members earned American Heart Association certification in CPR. They also go on occasional weekend training camps where they practice such field skills as camouflage, unit maneuvers, weapons safety, compass navigation, and target practice.

"We really are a bunch of Boy Scouts," he admitted when I suggested that's what it sounded like.

Like all good Boy Scouts, he insists that they obey the law. "We are not looking for confrontation. That's the last thing we want." He paused for a moment, then added, "We will fight if they push us."

It's that suggestion of armed defense that troubles critics. Sane, civilized Americans aren't supposed to mention the possibility that their government could turn violent—and certainly aren't supposed to suggest that they might take up arms against it in self-defense.

When Richard Cohen, writing about the militia movement in *The Washington Post*, states that "they are armed to stay armed, a tautology that apparently is the sum and substance of their ideology," he demonstrates his ignorance of the political and social culture of those who join the militias. People don't join a militia because they love guns, but because they believe that guns are necessary tools if they are to keep all the other freedoms they enjoy.

Cohen suggests that the Second Amendment "is an 18th century anachronism, incompatible with 20th and 21st century America." But militia members are looking at a 20th-century example in which a democracy devolved in less than a decade into a tyranny that first outlawed private ownership of firearms, then marched 6 million law-abiding people, beginning with its own citizens, to their death. Contrary to the portrait of them as raving anti-Semites, militia members are haunted by the same example that frightens their detractors at the Anti-Defamation League.

"My dad was on the lead tank that knocked down the gate at Dachau," says the Michigan-unit training officer. "I know what tyranny can do." (His father, he says, was an official war photographer with the 163rd Signal Corps in the 7th Army.) Militia members believe fervently in the reality of the Holocaust, they are determined that it never happen again—and they identify with the Jews.

This doesn't mean that they don't buy various conspiracy theories; many militia members do (though generally not ones with racist or anti-Semitic overtones). But the movement as a whole lacks a racist edge. In my many long conversations with activists around the country, I talked with one person—a lawyer in South Carolina—who made statements that smacked of racism. Members are often at pains to point out that their meetings include minorities. "We've got three blacks and one Muslim in our group, and we live in a part of Michigan where few minorities live," says the training officer.

James Johnson, the elected communications officer for the Unorganized Militia of Ohio, is a black utility worker who lives in inner-city Columbus. He sees federal government abuses in places like Ruby Ridge and Waco as a new phenomenon only to the extent that the targets were white. Like many militia members, he and his wife Helen are fundamentalist Christians who home school their children and see their militia work as an extension of their religious life. From their home, they put out a newsletter for militia members titled *E Pluribus Unum*.

Johnson describes himself "as one of a growing number of blacks who are beginning to understand that we must solve our problems on an individual and community level, not by relying on government." He believes that the right to keep and bear arms is especially important to minority groups. "I've had considerable success in recruiting other blacks into militia organizations," he says.

Since most militia units are made up of friends who have known each other for years, the movement's loose structure serves to isolate and exclude both overt racists and advocates of violence. "If anyone starts talking nonsense that smacks of sedition or illegal attacks on the government, we kick them out," Bob Clarke told me last February. This is exactly what appears to have happened with Timothy McVeigh and the Nichols brothers. Militia units in Michigan wanted nothing to do with them.

Other militia units are open to the public and don't exclude anyone. But they can discourage racist talk. Says Sheryl Tuttle, a movement supporter who lives in southern Idaho, "I remember once when somebody did make a racist remark in one of our

meetings. Someone else got up immediately to call him on it. He never came back to another meeting."

Tuttle and her husband Bill are typical militia supporters. In their mid-40s, they've raised one child and are now grandparents. Sheryl is active in her church's work with children and has served as an informal foster mother for several kids. She left a career in nursing several years ago to work with Bill designing and producing welded metal art pieces, which they sell at craft shows. When she started traveling between shows with sizable sums of money, Sheryl bought a semi-automatic pistol and started carrying it. Twice since then, she and Bill have scared off potential criminals by displaying (but not pointing) their weapons. In one case the threat was a prowler at their home, in the other a tailgater on a steep, deserted mountain road.

Bill, a voracious reader partial to conspiracy theories of history, is a military veteran and the son of a professional Army officer. The Tuttles got interested in the militia movement as a result of their growing involvement in politics and their frustration with government regulations that directly affect their lives and businesses. "Every time we go to a preschool board meeting" at the church, says Sheryl, "we've got another regulation we are supposed to obey. Now they want us to put an elevator in the church where we hold the school."

"Our government was founded on the Constitution and the Bill of Rights, and they have thrown our Constitution out," Bill said, explaining why he joined the U.S. Militia Association.

"Now we have to spend time and energy defending ourselves, instead of doing something more constructive," Sheryl told me when I asked her about the media blitz demonizing the militia movement. "It's going to scare a lot of people, and it scares me, but am I going to back off? No!"

The Tuttles and most other militia supporters are people who have grown up with guns, served in the military, and use guns as tools for hunting, small predator control, and self-protection. Guns don't frighten them, and they don't understand people who are frightened by guns. Having a gun in the house for self-defense is like buying fire insurance; it's something they believe they must have but hope they never have to use. They also know that when one is armed and dangerous, others, even government bureaucrats, tend to leave a person alone. They bear arms for personal defense, not because they expect to engage in shootouts, but because they believe that the display of a firearm will discourage criminal attack.

As one Internet posting put it: "The point of being armed is not to defeat an opposing army. It is...to prevent the agents of the government from dispersing the militia without killing them....An armed militia that acts with constraint can symbolically suggest that the Constitution is being abused. They do not need to ever level a weapon—they merely need to have it on hand to prevent the government from running roughshod over them."

After talking for hours with these people, watching more hours of their videotapes, and reading through reams of their literature and megabytes of electronic debate, my own conclusion is that the militia movement is a cry for attention, recognition, and respect, not a call for bloody revolution. Militia activists argue for the right of self-defense, not for the right to initiate violence or to break the law.

Some in the militia movement believe that a fight is inevitable, even though they insist they will not fire first. Others, probably the majority, hope that by being well-armed and sounding a loud warning, they will ensure that no one will ever dare try to lock them up if they refuse to give up their arms and their freedoms. They organize and arm themselves because they are frightened by what the government may do to them. But once they are armed and organized, they lose their fear, and they can turn their attention to peaceful efforts to roll back government.

"The last election does give us hope," Bob Clarke told me last February. "We are taking a wait-and-see attitude, but we are shifting our focus to political action. We're writing letters, sending faxes, and calling congressmen and assemblymen." Idaho's Samuel Sherwood explained, "Once people have armed and organized themselves, they have three choices: Take aggressive military action with horrendous results. Move to political action. Or decay and fall apart." Clearly, Sherwood prefers the political option.

John Wallner, an ex–Marine tank crewman who heads the San Diego Militia (half of whose 100 members are Jewish), is fighting for freedom in the courts. His organization has filed suit against the federal government challenging the ban on assault weapons. He considers his group first and foremost a public service group. Their most recent project was a fund raiser for the homeless of San Diego.

Bill and Sheryl Tuttle, shown here costumed for a craft show, are typical militia members. She is active in her church's work with children and left a career in nursing to work with Bill producing welded metal art pieces. They got interested in the militia movement as a result of their frustration with government regulations.

When I suggested they sounded like armed and dangerous Rotarians, he laughed and agreed with the characterization.

"So why bother with the militia bit?" I asked.

"The best way to keep the right to bear arms is for law-abid-

ing citizens who are serving their community to openly exercise the right," he answered. He wants the right to bear arms because he believes once he loses that right, he will soon lose all the rest.

Unlike many in the movement, Wallner doesn't buy the conspiracy theories. "We should not attribute to malice that which can adequately be explained by stupidity," he says.

While the people joining militias hold what have long been minority views on the national level, many of them live where they are in a political majority. They help elect sheriffs, county commissioners, state legislators, and congressional representatives who share their political ideals. But their elected representatives are outvoted in state capitals and in Washington, D.C.

Many militia activists, however, are not just scared of the government. They are looking for explanations for why their government has gotten so far off the constitutional track. They find easy answers in theories about a cabal of Trilateral Commission and Council on Foreign Relations conspirators who are manipulating events to create a New World Order in which the United Nations will rule while the American Constitution is treated as a historical curiosity.

People like Mark Koernke, the shortwave broadcaster who calls himself Mark from Michigan, travel the country speaking in public meetings. They distribute videos and publications claiming to prove that the conspirators have already secretly brought U.N. troops into the United States to impose the New World Order, and that the Federal Emergency Management Agency (FEMA) has prepared concentration camps where a new super secret national police force, the Multi-Jurisdictional Task Force (MJTF), will imprison those who dare to resist. Such conspiracy theories are also spread by word of mouth, reading lists, computer bulletin boards, faxes, and private shortwave radio broadcasts.

But militia activists aren't scared because they believe conspiracy theories. They believe conspiracy theories because they're scared. The fear came first; then they went looking for explanations. And all good conspiracy theories must have some basis in truth. These explain why taxes keep rising, why government regulations grow at warp speed, and why American politicians talk about a new world order while demanding that Americans be disarmed. The people describing the supposed conspiracies are offering explanations for what militia supporters see happening—the continual erosion of constitutional rights, from property rights to the right to bear arms to the rights of the accused.

Stories of U.N. troops sneaking into the United States and black helicopters scouting the countryside can be easily debunked, and publications popular with militia members, such as the John Birch Society's *The New American,* have already done so. But debunking the conspiracy theories does not solve the basic problem. Government still grows bigger, more expensive, and more intrusive. When politicians and media wonks refuse to recognize the legitimacy of complaints about big government, those who believe in conspiracies will not bother to listen to those trying to convince them their theories are wrong.

The most effective way to reduce militia members' paranoia would be to hold full, public hearings on Waco—the incident that galvanized many activists. "We didn't see any need to get seriously involved until we watched the Waco tragedy on live TV," a member of the U.S. Militia Association who lives in Boise, and is the mom side of a mom-and-pop business, told me. "We have been actively involved in the militia movement ever since."

Having watched it on live TV, she considers herself an eyewitness who has drawn an obvious conclusion that if the FBI didn't deliberately murder the Branch Davidians, agents did act with criminal negligence. The only way to convince her otherwise would be either for Congress to hold open hearings or to charge and try in court the federal officers who may have committed negligent acts that led to the death of innocent children. Nevertheless, this young militia mother—and every other of my contacts—was just as horrified by the Oklahoma bombing as she was by Waco.

Why would civil rights groups and the news media portray citizens like this young mother, Bill and Sheryl Tuttle, or James and Helen Johnson as dangerous threats who ought to be closely watched?

In his recent book *Crying Wolf: Hate Crime Hoaxes in America*, sociologist Laird Wilcox explains that as society increasingly condemns and deters hate crimes, organizations that depend on a fear of hate crime to feed their contribution coffers must constantly seek new threats. While the deceit may not be deliberate, the search for scare stories can lead to exaggerations and uncritical reporting of what may be hoaxes, unproven allegations, or simply bad information.

But the reason some people are savaging the citizen-militia movement may be even more perverse. Many supporters of an all-powerful central government have a political faith, not a political philosophy. They lack the intellectual tools necessary to challenge and debate alternative political theories. Incapable of understanding the reasons for the voters' revolt in the last election, and convinced of the truth of their own faith, they assume that those who have contrary political beliefs must be evil people.

Obviously, in this world view, those who hold guns while espousing an alternative set of political beliefs must be the most evil people of all. By suggesting that such people inspired the Oklahoma bomb blast, those with blind faith in big government

expect to discredit and destroy not just the threat they see in the militia members, but also the much more real threat represented by the last election, the Contract with America, and the growing demand by millions of voters for less government, lower taxes, more effective law enforcement, and more choice for the individual.

Marvin Stern of the Anti-Defamation League insisted when I talked to him that the ADL does make a distinction between those who join militias with legitimate political complaints and those trying to use the militias to push a racist agenda. But the ADL report begins by describing the militia movement as "bands of armed right-wing militants." The author then quotes several militia leaders on gun control, the possibility of future anti-government violence, and their conservative attitudes on education, abortion, and the environment. Having established that these people all hold political views most liberals think are extreme and dangerous, the report announces that "some of them—even in leadership roles—[are] persons with histories of racial and religious bigotry and political extremism." The report's author leaves it up to the reader to decide who are the real racists and who are just dangerous, right-wing political extremists.

Stern initially told me that Idaho was one of the states where racists were most influential in the militia movement. Reminding him that I live in Idaho, I asked for more specific details. Did he include Samuel Sherwood, the only militia leader with any significant following in Idaho, in that accusation? While not Jewish, Sherwood once lived as a legal resident in Israel on a kibbutz.

Obviously not willing to debate an issue with someone who knew the territory, Stern backed down, claiming he had erred in naming Idaho. Instead, he said, John and David Trochmann, who founded the Militia of Montana, were the racists. He did not cite any specific racist incidents, nor did he quote anything written or spoken by the Trochmanns that sounded racist or anti-Semitic, nor did he mention any additional evidence other than the already printed accusations of guilt by association.

A devout Christian, John Trochmann is a strong advocate of New World Order conspiracy theories. But he adamantly denied that he is a member of any racist organization. He readily admitted that he and his family twice visited the Aryan Nation compound in Hayden Lake, Idaho, several years ago, but insisted that they had gone there as part of a home-school learning project. "I am not on their mailing list, I have never signed any of their statements, and I certainly never joined the organization," he told me in loud, angry tones.

While I have no way of knowing what John Trochmann truly believes, I could find no overtly racist or anti-Semitic statements in the publications or the videotapes distributed by the Militia of Montana. And militantly racist groups rarely hide their agendas, which are, after all, how they attract members.

The level of scholarship in the Klanwatch report is perhaps best demonstrated by the statement, "The foot soldiers in these groups are just the type of people that Klan and neo-Nazi leaders have recruited in recent years." For students of logic, this could be translated into the syllogism: "All Klansmen and neo-Nazis are white, own guns, and don't like the federal government. Therefore all whites who own guns and don't like the federal government should be feared as Klansmen or neo-Nazis."

Using innuendo, guilt by association, and stereotypes to tar people as racist, anti-Semitic, and potentially violent could be considered as much a hate act as the burning of crosses. Such indiscriminate accusations pin targets on people like the Tuttles by identifying them as objects to be attacked with impunity. This, in turn, creates the distrust that can result in disastrous confrontations between law enforcement officers and legally armed citizens. That's what happened at Waco. Another such disaster could have happened in Roundup, Montana in early March. That it didn't suggests that the militias are more peaceful and rational than their critics make out.

"Gun-toting radicals busted in Montana," read the *Spokane Spokesman-Review* banner headline. Seven men had been arrested in Roundup on suspicion that they intended to kidnap and hang a judge or other public officials. The newspaper added that local officials were treating the case as though the suspects were high-risk terrorists. One of the men arrested was John Trochmann. The news story referred to the two civil rights watchdog reports and repeated their description of Trochmann and other officers of the Militia of Montana as men who had "long been involved in the white supremacist movement" and who promoted armed resistance to federal and state authorities.

Within 48 hours after the arrests, the leaders and most of the members of the citizen-militia groups knew about the arrests and wondered if they marked the beginning of a long-rumored roundup of militia leaders by federal law enforcement agencies. But it was the county sheriff, not the BATF or the FBI, who made the arrests in Roundup, a town about 500 miles away from Trochmann's home base in Noxon.

Trochmann, who actively monitors a number of anti-government groups, had gone as an observer with a group of Freemen to file papers at the Musselshell County Court House. The Freemen are tax resisters who oppose all government regulation of individual behavior, even the requirement that one carry a driver's license. After the court rejected the papers on legal grounds, a vocal but nonviolent altercation developed outside the courtroom. Sheriff's deputies arrested the five men and charged them with a basketful of felonies, including criminal endangerment, intimidation, and criminal syndicalism. Trochmann wasn't directly involved in the altercation but had been waiting outside in a parked car with one other person. Nevertheless, the sheriff arrested them both as part of the suspected conspiracy.

If the whole militia movement, or just the Militia of Montana, had been looking for an excuse to go to war, this would have been the opportunity. But no one mobilized and marched on Roundup. Instead, John Trochmann's nephew, Randy, made a public plea on a Spokane TV station and on the Internet, asking that all militia members stay home and send money to help pay for legal fees.

Simply put, the local law overreacted when a bunch of well-armed strangers rode into town. On March 29, Montana officials dropped all charges against five of the seven people, including

John Trochmann, and the felony charges against the other two men. Eventually the Musselshell County authorities must prove to a jury that the two men still facing charges did commit misdemeanor weapon violations. They may also have to prove in civil court that there was reasonable cause for the arrest of the five already released.

That's the way that charges of crimes and government abuses are supposed to be settled in this country. The people I talked with would rather do it that way.

ABC showed a headline from *The Resister*, a publication of the self-proclaimed Special Forces Underground that is read by some militia members. It read: "Would You Shoot Fellow Americans?" ABC didn't tell viewers that the article is an exposé of a survey distributed by a Marine to his troops—not a call to arms.

The events that followed the arrest of Timothy McVeigh suggest that the members of citizen-militia associations may have been fearful of the wrong institution. Their most dangerous enemy may not be the federal government but the national news media.

"When the FBI authorities were quoted, they were all very circumspect," says Bob Clarke. "The press very gladly lumped everybody together as a right-wing extremist, racist type of a cult. It's all the same to them. The media hasn't done a very good job of understanding this whole militia thing. There is a lot of misinformation coming off the airwaves."

There is indeed. After days of watching the media coverage on every one of the three major TV networks and reading through reams of news reports and critical editorial comment, I had neither heard nor read a single shred of court-admissible evidence that suggested that any unit of the militia movement was engaged in any conspiracy to overthrow the government or to commit any other crime in support of their political agenda.

Innuendo and scare quotes, largely taken out of context, dominated the reports. Even the advocates of conspiracy theories, such as Mark Koernke, never call for the overthrow of government in their material. While TV news people can play quotes out of context, anyone who watches hours of his militia videos knows that when a battle-ready Mark Koernke talks about defending one's sector, he's talking about a reaction force resisting an invasion, not the beginning of the revolution.

And some reports seemed deliberately misleading. ABC, for instance, showed a headline from *The Resister*, a publication of the self-proclaimed Special Forces Underground that is read by some militia members. It read: "Would You Shoot Fellow Americans?" ABC didn't tell viewers that the article is an exposé of a survey distributed by a Marine to his troops—not a call to arms.

One may not like the militia movement's political agenda, one may find its members' conspiracy theories troubling, and one may be offended by the idea that middle-class men and women are training with deadly weapons because of a fear that the government may someday attack them. But journalists have a responsibility to be accurate and careful, not merely entertaining and provocative. It is a responsibility they have too often shirked in reports on the militias.

As the Oklahoma bombing investigation proceeds, it is possible that the FBI may find evidence that a militia member or a citizen-militia association was involved in some way. If such evidence is discovered, the people I've met in the militia movement will be the first to cheer as the culprits are led away to jail. But until such evidence is presented in court, the national media have done a great injustice to a group of American citizens who spend their spare time practicing to fight a defensive war rather than playing paintball and who wear camouflage and combat boots rather than jogging shorts and running shoes while they get their outdoor exercise.

If those in the militia movement thought they had good reason to fear government before, they are now even more convinced that powerful forces are planning to take away their freedoms. New conspiracy theories are already spreading via the Internet, the fax machines, and the shortwave radio stations. These theories describe the Oklahoma tragedy as one more piece of the conspiracy, perhaps deliberately planned and executed by federal agents to destroy the patriot movement and regain the power lost in the last election.

"It's going to help the whole movement nationwide, to one degree or another," Samuel Sherwood answered when I asked what the impact of the anti-militia publicity would be. "For those who were wondering whether there was a conspiracy, this is going to certainly confirm that there is a conspiracy of some sort or another." He then added, "Bill Clinton is using this in the same way Hitler used the Reichstag fire. Only we're different people. The Germans weren't armed. We are."

"The bomb in Oklahoma blew up America," says the Michigan-unit training officer. "Every person in this country who turned on the TV and saw the broken bodies of tiny children being carried out of the building is a casualty. They will carry the wound the rest of their lives, just like I will....Bill Clinton is standing in the blood of those children when he attempts to use this tragedy for his own political advantage." ◆

Mack Tanner (macktanner@delph.com) spent 25 years in the U.S. diplomatic service, working in embassies and consulates in Peru, Panama, Mexico, and Thailand. Since retiring in 1987, he has been a writer in Moscow, Idaho, and has published nine paperback novels.

PAID ADVERTISEMENT

"It's not HIV..."

Scientists Discover The Real Cause of AIDS!

(Berkeley, CA) — At a shocking press conference recently, it was revealed that over **200** respected leading scientists who have been studying AIDS for the past several years now agree that the virus known as "HIV" cannot possibly be the cause of AIDS.

This group of well-known scientists includes Harvard researchers, Nobel prize winners, and top virologists from the University of California at Berkeley, Walter Reed Medical Center, the National Academy of Sciences, and the Pasteur Institute in France, among others. They most certainly cannot be dismissed as a "lunatic fringe."

And yet they have come under fierce attack from the "AIDS Establishment," the media and special-interest groups for suggesting that HIV is *not* the culprit causing hundreds of thousands of deaths.

HIV, these scientists say, is actually a "harmless microbe" which, for political and financial motives, is being used as a "smoke screen" to cover up the *real* cause of AIDS.

'Another deadly factor' is always present

According to Mr. James Trabulse, a spokesman for the 200 scientists and publisher of the group's newsletter, *Rethinking AIDS*, "Ten years of exhaustive research show that HIV is completely incapable of destroying a person's immune system. Instead, in every AIDS case, there is always *another deadly factor* present which — for political and financial reasons — has been deliberately covered up and ignored."

This "other deadly factor," the scientists say, has been covered up because politically powerful special-interest groups don't want the public to know about it. "It would severely harm their agenda if the public knew what really causes AIDS," said Trabulse.

$6 billion at stake

Furthermore, the "AIDS Establishment" now has a vested *financial* interest in perpetuating the myth that HIV causes AIDS.

"AIDS has become a **six billion-dollar-a-year *industry***," said Trabulse. "If the AIDS Establishment admitted that it's been chasing the wrong culprit all along, they would lose all that money overnight. That's why they're trying so hard to silence us."

The real cause of AIDS, say these scientists, is a very simple factor that's easy to treat and would *not* require the billions of dollars in research now spent on the HIV "wild goose chase."

Plus, the huge pharmaceutical company that manufactures the drug "AZT" (the #1 treatment for AIDS) would no longer have a lucrative market for their drug. "They would lose hundreds of millions of dollars overnight," declared Trabulse. "It's no wonder this company gives millions of dollars a year to special-interest lobbying groups who help perpetuate the HIV myth."

Truth is not 'politically correct'

All this would explain why these top scientists have come under such immense opposition from the AIDS Establishment and the special-interest groups. As they claim, they were merely doing their job trying to find out what causes AIDS — *and they found it!* But alas, their scientific findings are not "politically correct."

And they've paid the price for it. One of the most outspoken scientists in the group, **Dr. Peter Duesberg** of the University of California at Berkeley, has had his research grant from the government's National Institutes of Health *terminated* because he strayed into "inappropriate areas." Before questioning HIV, however, Dr. Duesberg — a member of the prestigious National Academy of Sciences — was one of the star researchers with NIH and one of the most widely respected virologists in the world. But now that a scientist of his caliber has credibly challenged the six-billion-dollar AIDS "industry," he has been targeted for destruction. He may even lose his lab at Berkeley, a post he has held for 25 years.

What's more, one of Dr. Duesberg's top doctoral students at Berkeley, **Mr. Bryan Ellison**, was prohibited from doing his thesis on Duesberg's view of AIDS. And even though he was only 6 months away from getting his Ph.D, the biology department illegally kicked Ellison out of the doctoral program at Berkeley in an attempt to silence him.

Can't silence truth

Ellison and Duesberg, however, refused to be silenced, and they teamed up to write a blockbuster book that exposes the fraudulent science and politics behind the HIV/AIDS myth. In this fascinating new book, they give exhaustive, convincing proof that the "other deadly factor" is what's really causing AIDS. And once you see what it is, you'll immediately understand why the powerful special-interest groups don't want this information getting out.

Indeed, the "other deadly factor" is currently affecting millions of Americans —*including school children*—and will continue to kill people, says Ellison, "until the AIDS Establishment admits its mistake, stops playing politics with people's lives, reverses its unconscionable drive for money and power...and instead works to save innocent lives."

Ellison and Duesberg's new book is titled ***Why We Will Never Win The War On AIDS,*** a provocative title designed to show that *politics* and *greed* — not a lack of scientific knowledge — are the real forces preventing a cure for AIDS.

You'll be shocked, horrified, and thoroughly outraged at the scientific fraud being perpetrated against an unknowing American public by the AIDS Establishment. You'll also learn just how big the "AIDS Scam" is, how the news media and the Federal Government are involved, who's behind it, and why.

Learn how to protect yourself!

But most importantly, you'll learn the *real* cause of AIDS — so you can know how to protect yourself and your family. According to Ellison and Duesberg, *even children are at risk,* but the AIDS Establishment refuses to warn the public.

Why We Will Never Win The War On AIDS is compelling and easy to read, written for laymen (not scientists). It's over 290 pages long and will undoubtedly be the most exciting and most important book you read all year. (Not surprisingly, though, this book is not being carried by the major bookstores and is therefore available only by mail.)

To get your copy today, send a check or money order for $19.95 plus $3 shipping and handling (total $22.95) to:

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Fertile Attraction

By Adam Clayton Powell III

Pulling the common thread

PRESIDENT CLINTON and lawmakers on Capitol Hill are struggling to deal with the fallout from the number-one issue of the day: the bombing of the Alfred P. Murrah Federal Building in Oklahoma City.

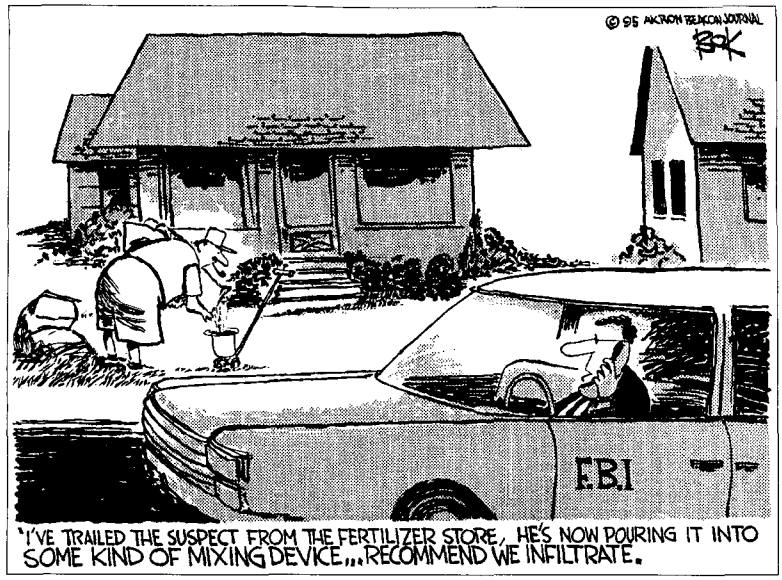
The president and some members of Congress are calling for sweeping powers of surveillance, to keep undesirable domestic groups under control. Others are drafting anti-terrorist legislation to address the threat of sabotage from abroad. All say they are working to protect the nation from those who would kill innocent children, and even babies.

These approaches, however, ignore the common thread that runs through the two major acts of terrorism in recent U.S. history, the Oklahoma City bombing and the attack on the World Trade Center in New York City. This common thread is what enabled criminals to manufacture the terrible devices that killed and maimed dozens, including innocent children and even babies.

This common thread is fertilizer.

The Oklahoma City and World Trade Center bombings were the product of cheap and readily available fertilizer. Criminals and deranged individuals can walk into fertilizer stores throughout America, put down their cash, and walk out with fertilizer to build hideous devices of death, no questions asked.

How many more urban terrorist catastrophes must be seared into the nation's conscience before action is taken? The federal government can act—if it has the will—to confront the peril by placing this hazardous substance under immediate and strict federal control.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BRK
F.B.I.
"I'VE TRAILED THE SUSPECT FROM THE FERTILIZER STORE, HE'S NOW POURING IT INTO SOME KIND OF MIXING DEVICE... RECOMMEND WE INFILTRATE.

There are a number of approaches that might work. The most effective, of course, would be to outlaw completely the production, sale, and use of fertilizer. This would go a long way toward eliminating the potential for terrorist bombs, but it might have unfortunate side effects, since peaceable citizens would be affected.

Indeed, we must recognize that most people use fertilizer for legitimate and peaceful purposes. And law-abiding fertilizer users should be assured that they will not be denied access to and use of fertilizer. It is only the lawless users of fertilizer who must be targeted. A complete ban would unduly penalize the majority of Americans, who obey the law and use their fertilizer properly. A sensible middle ground between a draconian total ban and today's unregulated lawlessness must be found.

One such solution would be to limit, not ban outright, fertilizer sales. This would prevent undesirable and disturbed individuals from purchasing this dangerous substance. For a start, convicted felons and the mentally ill could be barred from access to fertilizer. And prohibiting the export of fertilizer or its sale to foreign nationals would keep fertilizer out of the hands of overseas terrorists.

Thankfully, modern technology can be employed to make certain that fertilizer only reaches legitimate users. Those who want to buy fertilizer might be required to obtain Fertilizer Control (FC) cards from the government. These cards would limit sales to legitimate customers and keep fertilizer out of the hands of murderous terrorists. Fertilizer ownership must be treated as the privilege that it is, not a universal right.

For the convenience of law-abiding Americans, FC cards could be obtained when we obtain or renew our driver's licenses—President Clinton would do well to propose a Motor Fertilizer Control bill. And to minimize inconvenience to legitimate fertilizer buyers, the FC cards should be equipped with high-tech magnetic stripes or computer chips so they could be swiped through FC terminals in each licensed fertilizer dealer for instant background checks.

THIS WOULD FOCUS ATTENTION WHERE IT is due: on the malefactors who buy fertilizer with only evil in mind. And in all candor, we know who they are. Arab terrorists are easy to spot, and they must not be able to obtain FC cards. After all, Arabs all live in the desert, where, as we know, they have no legitimate reason to use fertilizer. Right-wing hate groups are likewise easy to spot because they usually cluster in isolated parts of the Rocky

CHIP BOK

Mountains, the southwestern desert, and other places where there is no topsoil to speak of. So there is no reason they should be allowed to purchase, possess, or sell fertilizer.

Urban gangs are another example, since we know those who live in cities have no lawful need for fertilizer. To deal with urban gangs, major American cities, starting with New York and Washington, could be encouraged to exceed the federal FC standards with tough municipal ordinances mandating strict local fertilizer control rules. (To protect city residents who might use fertilizer in their flower pots or garden plots, small amounts of fertilizer might be exempt from federal and city controls.)

Then there is a problem of financing the fertilizer initiative: Because of the federal budget deficit, Congress could pass along the cost of the program to states or local governments. This is one area where a federal program could best be carried out by localities. Who better than one's neighbors should decide whether you should be allowed to have fertilizer?

STILL, IN THE END, THE FERTILIZER PROBlem must be recognized as a national problem. And as such, it should be the focus of a coordinated inter-agency federal effort. Fertilizer is used to grow crops, and some traces could find their way into food eaten by innocent children (including babies). So the Food and Drug Administration should be part of the federal joint fertilizer strike force, perhaps to license fertilizer manufacturers. The FDA could be empowered to seize all fertilizer produced by unlicensed companies, and to confiscate all of those companies' profits, retroactively, to deter those who would be tempted by corporate greed to conspire with terrorists.

And because fertilizer can damage the environment, the Environmental Protection Agency could be enlisted to help in the detection and enforcement effort. The Justice Department, too, could add fertilizer to the list of substances under the jurisdiction of the Drug Enforcement Administration, because of the DEA's experience in hunting down and arresting traffickers in dangerous substances.

The U.S. Postal Service, too, can be enlisted. Just as they already seize explicit depictions of sexual acts, postal workers could be empowered to seize explicit depictions of fertilizer and fertilizer-related acts, and to keep fertilizer information out of the hands of would-be terrorists.

Since some evildoers may choose to use private mail services, federal authorities may also need to examine UPS and Federal Express shipments to check for violations of FC. And the FBI may need to eavesdrop on telephone traffic, to learn who may be conspiring by fax or conference call to obtain illicit fertilizer.

Arabs all live in the desert, where, as we know, they have no legitimate reason to use fertilizer. Right-wing hate groups are likewise easy to spot because they cluster in isolated parts of the Rockies, the Southwest, and other places where there is no topsoil to speak of. So there is no reason they should be allowed to purchase, possess, or sell fertilizer.

Similarly, with the rapid growth of Internet, the proximity of university Internet terminals to college chemistry laboratories, and increasing use of Internet by innocent children (including babies), all online communication must also be monitored.

But among federal agencies, the Treasury Department must take the lead through an expanded Bureau of Alcohol, Tobacco, Firearms, and Fertilizer. The BATFF would be able to build on its existing network of enforcement offices around the country, easily adding fertilizer to its list of hazards from which the American public must be protected.

There will, of course, be naysayers and nitpickers who will claim this is some infringement of their constitutional rights. Nonsense: *Nowhere in the Constitution is there any explicit right to own fertilizer.* Some, perhaps including the American Civil Liberties Union, may try to construe fertilizer ownership as protected by the constitutional privacy right. But such an alleged right is not found in the Constitution, and its existence is at best ambiguous.

In any event, the Constitution was written long before fertilizer was used by criminals to create explosives, and as legal scholars tell us, it must be a "living" document. The Constitution can only be interpreted as permitting the government to maintain order through fertilizer control.

Besides, the politics of fertilizer control will be irresistible. The narrow technical argument of musty academics and legalistic extremists will be swept away by television news clips showing the dead and injured, especially the horrifying images of innocent children (including babies) who were maimed and killed by these heinous instances of fertilizer abuse.

This should sweep through Congress and be signed by the president by autumn. And then the nation can turn its attention to another threat to the nation's children, an annual threat that has silently crept up on the nation, as stealthily as the most insidious Arab terrorist.

That threat is ice.

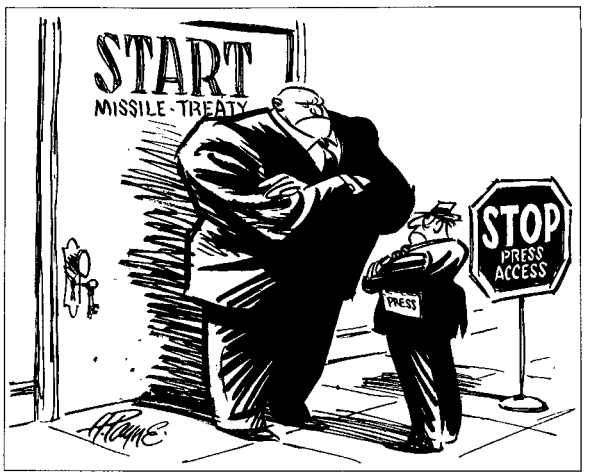
Every winter, hundreds fall through the ice that forms quietly, imperceptibly, on rivers, lakes, and ponds. Many children (including babies) can die gruesome deaths by drowning. Congress can act to address this menace and have a bill on the president's desk by midwinter. There is no time to lose.

Adam Clayton Powell III (adam@ffnyc.mhs.compuserve.com) is director of technology studies and programs at the Freedom Forum.

Mutual Assured Obstruction

By Michael R. Boldrick

How the START treaty disarms investigative journalists



AMERICA'S FREE PRESS IS anything but free when it comes to reporting on compliance with the START I arms control agreement. Under the terms of START I, the United States' and the Russian Federation's nuclear republics are supposed to downsize their still-formidable fleets of strategic nuclear bombers, ballistic missiles, and missile-firing submarines. But despite evidence that the Russians are backsliding on the deal, the U.S. government is holding up its end of the bargain, including a provision that bars independent investigations of compliance.

Four years after the initial strategic arms reduction agreement was signed, the first compliance inspections have finally gotten underway. The gap between ratification and implementation was caused by the 1991 breakup of the Soviet Union. Although the Soviet ratification bound Russia to the deal, the Federation's other nuclear republics—Belarus, Kazakhstan, and Ukraine—had to independently ratify the accord before the two nuclear superpowers could exchange inspectors to start the on-site verification process.

START I triggered a timetable by which various on-site inspections would have to be initiated within 45 to 165 days of December 5, 1994, the day the treaty went into force. Both sides are pledged to reduce their nuclear warhead counts from Cold War highs that topped 11,000 super bombs to only 6,000. A second START accord, which would further decrease warhead numbers to 3,000–3,500, is currently being reviewed by the U.S. Senate and Russian Duma for ratification.

But forget about getting solid, independently verified details about compliance with the most important disarmament treaty ever negotiated by the United States. Other than official announcements, highly sanitized reports, and carefully worded press releases, there is virtually no information available to the media on how Russia and the United States are living up to their START obligations or how they are cooperating with the first cadre of on-site inspectors.

This cold shoulder is by design, not accident: The treaty itself bars the U.S. government from allowing reporters to conduct independent investigations or to consult unsanctioned sources in filing stories about START compliance. It doesn't matter whether journalists want to visit a missile base in Siberia or South Dakota that's undergoing compliance inspections: They won't get permission.

Think about it: If Washington had maintained equally tight controls over a minor burglary in a posh apartment complex or an Arkansas land-development scheme, Watergate and Whitewater would not have become household words. With both political parties deeply committed to arms control, it's unlikely that official Washington would expose any Russian cheating until well after it became a major threat to national security.

As a freelance writer on strategic nuclear issues, I only learned by chance about Pentagon and State Department efforts to muzzle would-be independent arms control reporters. I asked the Arms Control and Disarmament Agency's press office if I could accompany U.S. inspectors to Russia to see for myself the final meltdown of the Cold War. My interest was more than professional: I also wanted to observe the concluding chapter of the Mutual Assured Destruction era because I once stood on the front lines of Armageddon as a Minuteman combat crew commander.

ACDA denied my request. My appeals to the Pentagon and the U.S. On-Site Inspection Agency produced the same results. Reporters, I was informed, cannot witness a compliance inspection, observe the destruction of a bomber or missile silo, or conduct detailed interviews with American or Russian START inspectors. Other than a photo opportunity or an occasional brief Q&A session when inspection teams arrive in the United States or Russia, no other contact is permitted between the working press and the military and diplomatic officials charged with enforcing START rules.

WHY? BECAUSE THE UNITED STATES—or, more precisely, the 93 Senators who voted for START I ratification—accepted without debate restrictive clauses limiting public scrutiny of compliance information. The origin of the ban is unclear—some government sources told me it was the work of the Russians, others claimed it was a U.S. initiative—but there it is, artfully buried in 280 pages of tedious text.

According to the START I Protocol on Inspections and Continuous Monitoring Activities, "[T]he Parties shall not allow representatives of the mass media to

HENRY PAYNE

accompany inspectors during inspections...." Article VIII, paragraph six, takes the restrictions a step further, dictating that "[t]he Parties hold consultations on releasing to the public data and other information...in fulfilling the obligations provided for in this Treaty." This clause gives Russia veto authority over release of inspection data to the American public.

Beyond press releases and official statements, the only information available for public review is an annual report to Congress required under Section 22 of the Arms Control and Disarmament Act. The current edition, signed by President Clinton, contains several statements critical of Russian compliance efforts.

The report, for instance, cryptically states that "the Soviets refused to allow U.S. inspectors to take a critical measurement." After START I was ratified in 1991, technical exhibitions were hosted by each side for close-up inspections of the bombers, missiles, and submarines monitored by the treaty. The refusal was referred to the Joint Compliance and Inspection Commission created by START to arbitrate disputes. Though their rulings are "confidential," Russia agreed that the Americans could "measure the item in question no later than 30 days after the treaty's entry into force."

I figured that the ACDA, which prepares the annual report, might at least clarify its own vaguely negative account. I asked ACDA spokesman Matthew Murphy three questions concerning the measurement dispute: What is the "critical measurement"? Does it apply to a bomber, missile, or submarine? Since the treaty had been in force for more than 30 days, had Russia kept its word on permitting the measurement?

Murphy's stock answer to each question was as brief as it was unhelpful: "That's classified information."

Russia also failed to meet their START obligation of giving advance notification of a major strategic exercise held in 1993. I asked Murphy if the United States filed a protest.

His answer was again succinct and unhelpful: "That's classified because it would disclose diplomatic relations between countries."

From *The Bulletin of the Atomic Scientists*, I learned that Russia held another strategic exercise in 1994. Last June 22, Moscow military leaders test launched an SS-25 ICBM, an air-dropped cruise missile, and a submarine-launched ballistic missile in a mock attack against the United States. I asked ACDA if Russia had mended its ways and given advanced notice this time.

Murphy's stonewalling continued: "Information requested in your question is obtained from intelligence collection sources so I cannot confirm or deny the exercise took place."

So, is Russia living up to its START obligations? A fair question, especially since the administration's own compliance report lists several violations and its spokesmen offer virtually no information on recent deviations. More alarming are persistent reports that Russia is dragging its feet in downsizing strategic forces. While the United States is currently below the 6,000-warhead ceiling, Russia is believed to have more than 9,000 strategic nuclear weapons available for military operations. Given the dubious stability of the Yeltsin regime and the continuing unrest throughout the former Soviet Union, a stockpile that huge is not comforting.

Ongoing compliance inspections will test Russia's sincerity in living up to treaty obligations. But forget about getting anything close to nonpartisan verification. Only Pentagon yes men, State Department hacks, self-interested ACDA spokesmen, and politicians enamored of a bipartisan fixation for arms control know for sure—and they're not talking.

Government officials in Washington and Moscow retain a monopoly in reporting START compliance. Investigative reporters have effectively been disarmed by the arms control process. The free speech standards for the START process are those of a former police state, rather than those of an open society.

Michael R. Boldrick is a retired Air Force colonel who writes on arms control issues.

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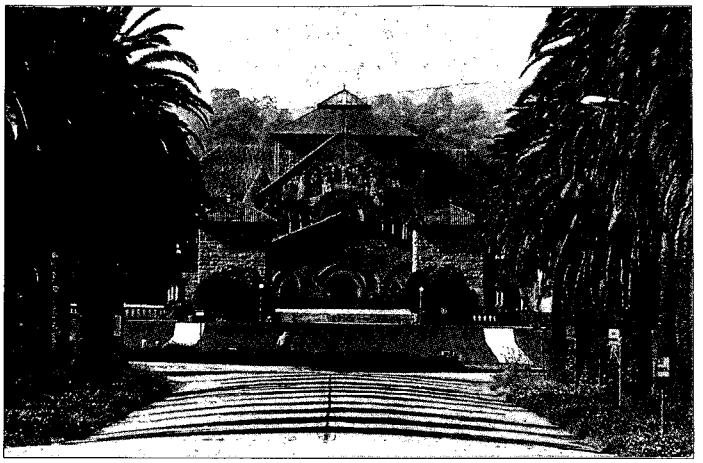
Forcing Free Speech

By Michael S. Greve

The libertarian case for speech codes



Stanford University: Using a law that imposes "free speech" rules on private colleges, a California court has struck down its speech code.

ANOTHER CAMPUS "speech code" has bitten the dust. In late February, in a lawsuit brought by conservative law students at Stanford University, a California Superior Court found that Stanford's rules against "discriminatory harassment" violated the plaintiffs' rights to freedom of speech. Although the code prohibited only the direct, "personal vilification of students on the basis of their sex, race, color, handicap, religion, sexual orientation, or national and ethnic origin," the court found that even these narrow prohibitions violated the First Amendment.

This is an expansive reading of Supreme Court precedents on hate speech. As such, it is most welcome. And it is inspiring to see a bunch of students, litigating *pro se*, beat the clever Stanford law professors who drew up the code. Still, one is hard pressed to celebrate the case as a victory for free speech. Stanford is a *private* university, and one must wonder what happened to *its* freedom of speech and freedom of association—not to mention its property rights—in this case.

The students could not have sued Stanford under the First Amendment were it not for the "Leonard Law." In essence, this unique provision in the California Education Code makes the First Amendment directly applicable within all private, postsecondary educational institutions in the state, treating college rules as though they were government restrictions. Stanford argued that the Leonard Law is unconstitutional because it compels private institutions to associate themselves with ideas that they do not wish to express or even tolerate. The court ruled that the Leonard Law did not restrict Stanford's speech, but merely "expand[ed] the realm of speech without favoring one side or the other." It also held that the law did not burden Stanford's freedom of association because the university could easily disassociate itself from the hateful speech it was seeking to discourage—for example, by publicly denouncing it.

Stanford didn't appeal. President Gerhard Casper told the press that he despaired of explaining to the public a position that he could not even explain to Stanford's students and trustees. It thus falls to those who are unencumbered by President Casper's official responsibilities to explain why the Leonard Law is probably unconstitutional and, in any event, a very stupid idea.

A STUDENT'S DECISION TO ENROLL AT Stanford, on whatever terms and conditions it offers (including disciplinary rules), is voluntary. Both the freedom to take one's money and talents elsewhere and the freedom to sue the university for failures to uphold *its* end of the bargain are powerful antidotes to P.C. tyranny.

One would not expect this argument to persuade the American Civil Liberties Union: Lacking confidence in private autonomy except when it comes to sex, the ACLU supports the Leonard Law, and its lawyers have been busy forcing private actors it doesn't like (such as Georgetown University) to fund, sponsor, and include the speech of groups it does like (gay and lesbian groups). However, it is disconcerting to watch otherwise sensible people hop on this statist bandwagon.

The conservative Individual Rights Foundation, a public interest law firm in California, has threatened private colleges with lawsuits under the Leonard Law. It has also embarked upon a campaign to bring that law to other states, and has vowed to lobby for statutes that would prohibit private *employers* from restricting their employees' freedom of speech. Similarly, Rep. Henry Hyde (R-Ill.) has proposed to amend Title VI of the Civil Rights Act—which prohibits discrimination in federally funded institutions—to require the recipients to also observe the First Amendment.

While well-intentioned, such conservative attempts to combat P.C. mania with regulation are seriously misguided. Conservatives cannot beat the left at its game of creating private rights against "discrimination," and they shouldn't even try. This is more than a point of abstract principle; it affects not merely speech codes, but broader civil rights questions.

Modern free speech law has two basic tenets: a "wide-open and robust" public debate, and strict government neutrality with respect to the content and viewpoint of private speech. This means Americans must suffer a certain social incivility, and

CHUCK PAINTER

we wind up protecting false and pernicious ideas along with intelligent, rational discourse. But these costs are dwarfed by the manifest dangers of the alternative to robust debate—allowing a monopolistic government to police the marketplace of ideas. Similarly, we insist on government neutrality as our only effective hedge against government favoritism.

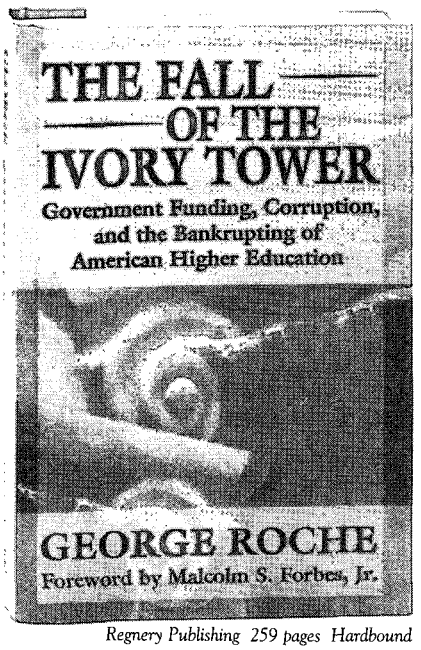
BUT RULES THAT GUARD AGAINST GOVernment abuse make no sense when applied to private institutions. In a nonmonopolistic market, any central, uniform rule—even a rule that itself embodies the values of freedom and diversity—will almost invariably restrict private options and social diversity. None of the thousands of colleges and universities in this country can coerce conformity among anyone except the faculty and students who have voluntarily contracted into the existing arrangements. In this context, "First Amendment principles" are not a guarantee of freedom but a zero-sum game of redistribution. They marginally expand the "freedom" of some individuals—for example, those who want to work or study at Notre Dame without speech codes, or at a multicultural St. John's. But Notre Dame and St. John's lose the freedom to *be* Notre Dame and St. John's.

For this reason, the First Amendment is generally understood to protect private speakers against compelled speech and association. Thus, the Supreme Court has struck down state laws imposing a "right of reply" requirement upon newspapers, on the grounds that such a requirement would force private speakers to associate themselves with unwelcome speech.

Unfortunately, however, the Supreme Court, in a particularly egregious 1980 case, *Pruneyard Shopping Center v. Robins*, upheld a California statute that granted picketers and leafleteers access to private shopping malls. Private malls, the Court said, are in effect public places and, unlike newspapers, have no viewpoint of their own that could be distorted by other private speakers on the premises.

One would think that universities are more like newspapers than shopping malls. They trade in ideas and speech, and the right not to transmit or to associate themselves with speech is central to their function. Nonetheless, the Stanford case was decided principally under *Pruneyard* and its tortured reasoning.

The court reasoned that Stanford had in effect forfeited its right to exclude by opening its campus and admissions to the general public. Using the same implausible argument, other courts have held that the "generally open" St. Patrick's Day Parade cannot exclude gay and lesbian advocates, except when the parade is being held in protest against the court-ordered inclusion of such groups. Perhaps Stanford can now exclude hateful speech in protest against the Leonard Law, even if it cannot do so as a general matter.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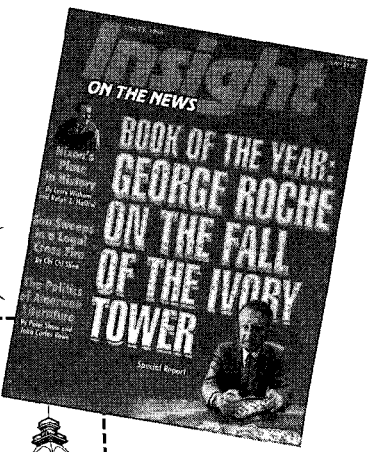

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THE STANFORD DECISION ALSO FOLLOWED *Pruneyard* in holding that the law which compelled the toleration of unwanted speech was "neutral" and did not impose any *particular* viewpoint or "dogma." Wrong again. The Leonard Law imposes a dogma—namely, the idea that education is best pursued in an atmosphere of "robust debate." (The California court went so far as to label this a "compelling state interest.") But what of educational institutions that place a priority on rational discourse, discipline, or civility?

Religious institutions in particular are inclined toward the search for truth through obedience to tradition rather than robust debate—and toward policies that are more restrictive than those allowed under the First Amendment. To be sure, the Leonard Law contains a narrow exception for institutions that are "controlled by a religious organization," as does the Hyde Amendment. But even entirely secular colleges should be entitled to believe that there is good speech and bad speech; that they should teach the good and discourage the bad; and that they should not be forced to provide a forum for Khalid Muhammed or David Duke, notwithstanding their undeniable contributions to robust debate. Strange as it may sound to California judges, millions of individuals are eager to enroll in such censorious institutions. Depriving them of that option (or confronting them with an all-or-nothing choice between a bible school and a free-for-all) is not a plausible state interest, let alone a compelling one.

Rep. Hyde's proposed amendment, unlike the Leonard Law, would not directly impose First Amendment controls on private institutions; it would merely condition the receipt of federal funds on the observance of the Free Speech Clause, much as Title VI and IX of the Civil Rights Act restrict federal funding to non-discriminatory institutions. Taxpayers, the argument goes, cannot be called upon to support institutions that discriminate on the basis of race, ethnicity, sex, and so on. Why, then, should they be asked to support institutions that discriminate on the basis of someone's viewpoint? Having accepted the sweet of government funding, private colleges should also accept the bitter of abiding by the rules that apply to the government.

This may sound more pleasant to libertarian ears than the authoritarian drums behind the Leonard Law. But the Hyde Amendment would be even *more* dangerous to free speech and free choice.

Since Title VI and Title IX cover practically every educational institution in America, the reach of the Hyde Amendment would be nearly identical to that of a national Leonard Law. But unlike the Leonard Law, the Hyde Amendment would not only authorize private lawsuits by students; it would also, and principally, empower the Education Department's Office for Civil Rights (OCR) to enforce compliance by means of investigations and "voluntary" agreements with recipient institutions, reached under the threat of withholding federal funds.

In the hands of OCR and federal judges, the simple Title VI prohibitions against discrimination have mutated into goals, timetables, quotas, and diversity mandates. In the same way, under any rule that prohibits discrimination against speech, OCR would soon claim an affirmative mandate to ensure viewpoint "diversity." It already claims the authority to regulate "harassing" speech that may be perceived as hostile by women or minorities, including scholarly teaching and writing on controversial subjects. The last thing this agency needs is an actual legal mandate to investigate what's being said, taught, and written on private campuses.

IN THE WORLD OF THE LEONARD LAW, conservative students and legal foundations can club a few more P.C. administrators over the head. But by that same token, the ACLU can and will compel Wellesley or Kenyon to show equal concern and respect for Nazi marches across their campuses and beggars in their libraries. The Hyde Amendment would in addition empower the OCR to bully and cajole private colleges to guarantee free speech (except, of course, ethnocentric and sexist speech) until every last one of them complies with the reigning standards of orthodoxy. Quite apart from libertarian scruples about imposing government norms on private actors, this bargain is not worth having.

The willingness of some conservatives to strike that bargain represented merely a lack of judgment at a time when liberal institutions, from Congress on down, looked well-nigh unassailable. In that environment, the attempt to beat the liberals at the anti-discrimination game seemed plausible—or at least, less implausible than the alternative of dismantling bureaucracies in the education sector and elsewhere. After November 8, 1994, such a campaign looks quite feasible.

Thus, conservatives should not send the muddled message that they wouldn't mind regulation so long as it helps the politically incorrect. It is more principled and more promising to insist that free speech is so vital and sacred that no one should tolerate government interference —even in the form of non-discrimination laws, and even if such laws are useful when it comes to private *conduct*.

Conservatives could also accept the premise that the Hyde Amendment and the Leonard Law share with leftist attempts to regulate speech, which is that speech is not so different from conduct after all. But they should then turn the argument around, and insist on the private right to discriminate in both areas and for similar reasons—freedom of contract, protection against compelled association, and social diversity.

This position strikes at the heart of the civil rights empire. It is a respectable position, and it is precisely in the context of speech that it will strike people as most plausible. Ultimately, the case for private discrimination may be too shocking for popular consumption. But it deserves serious consideration, and sounding two cheers for private speech codes would be a good way to test the water. ®

Michael S. Greve is executive director of the Center for Individual Rights, a public interest law firm in Washington, D.C.

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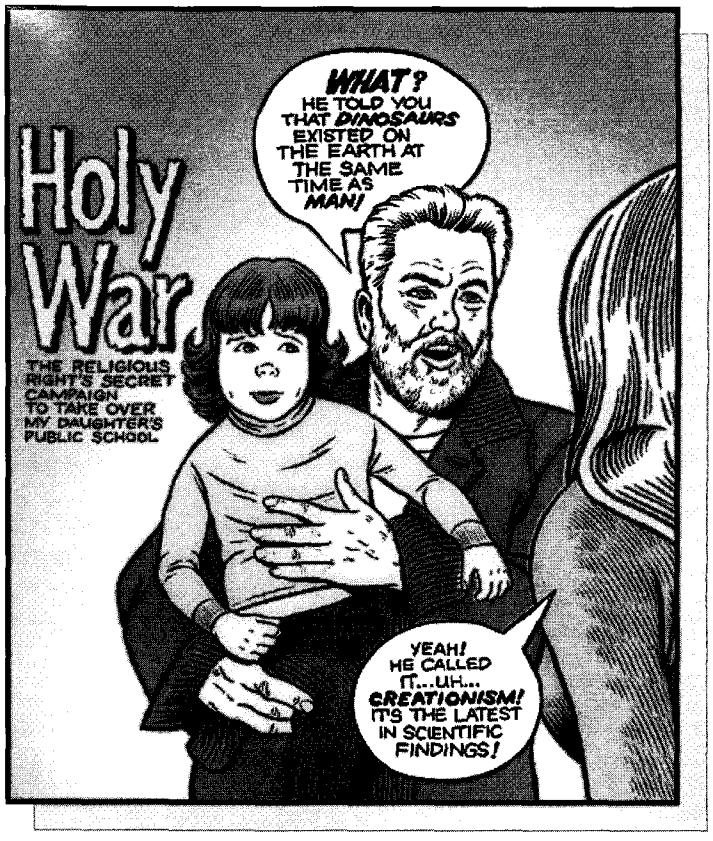
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Sticker Shock

By Mubarak S. Dahir

Pennsylvania tries to turn labels into laws.

ON EITHER SIDE OF THE MAIN ENtrance to the capitol building in Harrisburg, Pennsylvania, are larger-than-life statues depicting men and women herded in masses, struggling for those oblique ideals that government art always seems to evoke: liberty and freedom and justice.

Several years ago, Pennsylvania's lawmakers decided those white-stoned statues guarding the gates of liberty and freedom and justice were taking just a bit too much liberty in dangling their freedom for all to see. So they commissioned modern-day artists to plaster over the statues' private parts.

This year, Pennsylvania's lawmakers are involved in a new debate over a different kind of public exposure. As a result, they found themselves unwittingly exposed to other possibly offensive art: an anti-censorship activist attempting to regale them loudly with the naughty lyrics of number-one rapper and murder suspect Snoop Doggy Dogg during a debate over a new law that would outlaw selling recordings with warning labels to minors. This dispute has drawn the national attention and lobbying muscle of special interest groups and civil liberties advocates—and also splintered traditional liberals and fueled charges of racism from all sides.

Black-and-white "Parental Advisory: Explicit Lyrics" labels have been applied to albums by the recording industry itself for nearly a decade. But the labeling was only agreed to under public pressure, and with the understanding that the labels were informational, not a legal instrument to restrict sales. If this bill passes—and it seems likely to—it could change the ground rules not only in Pennsylvania, but in other states looking to follow suit.

Snoop Doggy Dogg: A Pennsylvania bill would make selling his records to minors a crime.

Similar debates are already raging in at least four other states:

• In Washington state, the Harmful Material to Minors bill would create "adults only" sections in music stores, and keep minors out of concerts where "harmful recordings" were performed.

• In Louisiana, a $1,000 fine or six-month prison term could be handed down to violators of a proposed bill that would prohibit the sale or distribution of "lyrics harmful to minors," with a minor defined as an unmarried person under the age of 17.

• In New York, a bill proposed in March would prohibit the sale of music to minors with lyrics describing, advocating, or glamorizing suicide, sodomy, rape, incest, bestiality, sadomasochism, adultery, murder, violent racism, religious violence, morbid violence, or the illegal use of drugs or alcohol.

• And in New Mexico, a bill currently in the state House's Judiciary Committee would make it illegal to expose minors to violent or sexually explicit material through media including pictures, sculptures, film, and music.

Such laws would be a serious blow to First Amendment rights. But beyond the legal and constitutional problems are more difficult questions about racism, the social responsibility of the megamillion-dollar recording industry, and the ever-increasing violence that plagues America's city streets and the teenagers who hang out there.

A FLOOR VOTE ON THE PENNSYLVANIA bill is expected sometime this fall in the state House of Representatives. It sailed through the Judiciary Committee 15–6 in February, and it can probably pass on the floor with the same margin of popularity.

The law, if passed, would create two new crimes in Pennsylvania. First, it would make it a crime for any store owner to knowingly sell a tape or compact disc with a parental warning label on it to anyone under 18 years old, unless the minor's parents were present. It would also make it a crime for a minor to misrepresent himself or herself as being 18 years old in order to buy music with a warning label. Anyone who sells the music to a minor would owe a $25 fine for the first offense and a $100 fine for each subsequent offense. Minors caught buying the music would be forced into 10 hours of community service.

Democratic state Rep. T.J. Rooney, the prime sponsor of the bill, says the measure would help curb "youth violence that is undoubtedly fueled by the type of irresponsible stuff they hear in these recordings....I'm not dumb enough or naive enough to believe if this bill passes it will solve all our problems. But it's got to be part of the larger discussion."

The discussion isn't just about whether *any* restriction of music sales is right. A larger question is: What music is being labelled, and who does the labeling?

AP/WIDE WORLD PHOTOS

"All the talk about this being unconstitutional is a bunch of crock," says Rooney. The Constitution safeguards the public against *governmental* powers. Since the state would have nothing to say about which recordings get slapped with a label, the state would not be acting as a censor, he says. "It just drives the record industry nuts because we're using their own standards," Rooney chuckles.

To some degree, he's right. The unhappy task of self-censorship already falls on the recording industry. In 1985, under pressure from the National Parent-Teacher Association and the Parents Music Resource Center (led by now–Second Lady Tipper Gore), the recording industry agreed to voluntarily sticker music with violent or sexually explicit lyrics. The measure was meant to help parents decide what music may or may not be appropriate for their children to hear.

Now Rooney wants to use that same voluntary industry standard to regulate the sale of music, something that not only goes beyond the original intent of the labels, but in fact does exactly what the labeling was designed to prevent.

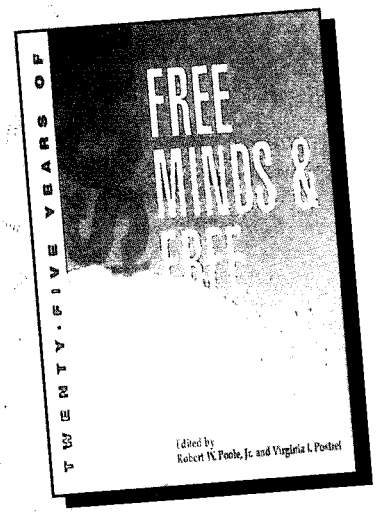
LEGAL HISTORY SUGGESTS THE GOVERNment can't base laws on industry standards and then claim it isn't compromising the Constitution. In a landmark 1970 case (which, coincidentally, was decided in Pennsylvania and prosecuted and lost by now–U.S. senator and presidential candidate Arlen Specter), the courts ruled that the movie industry's self-imposed rating system couldn't be adopted as a legal standard.

So if a theater owner admits a 15-year-old to an R-rated movie, he may have breached industry ethics, but he hasn't broken any laws. In the same way, if a retailer decides to sell a CD with a warning label on it to a 12-year-old, the retailer may not be exercising his best judgment, but the government doesn't have the right to stop him.

Even if the law isn't unconstitutional, Rooney's ideas about it have a couple of problems. First, the term "industry standard" is misleading. In reality, there is no standard. Whether or not a particular recording gets a parental warning label is up to the individual record companies. A song could be recorded at one company and released with a warning label, while another company releasing the same song wouldn't attach the label.

Second, the labeling is voluntary. If a law made selling recordings more difficult, "there's no question the recording industry would pull off the labels," says Mickey Granberg, director of government relations for the National Association of Recording Merchandisers. "[A law] would accomplish exactly the opposite of what it intended: The recording industry would simply label fewer and fewer pieces."

The law has possible perverse effects



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in the opposite direction as well. Despite the claim by politicians that the law would curb sales, and the outcry from the national retailing lobbyists about how it would adversely affect the industry, some record store managers say such a ban might actually *increase* sales. They point to Ice-T's controversial CD *Body Count*, which contained the song "Cop Killer."

Bill Duffy, manager of Tower Records on South Street in Philadelphia, believes the album "would have been nothing without all the attention it was given." But the controversy surrounding it made it a best seller. Duffy suggests the same thing would happen to stickered CDs if the Pennsylvania bill became law, and guffaws at the suggestion that record companies would pull off the stickers. On the contrary, he says, they may just sticker more CDs, saying it's an "obvious way to double your sales."

SOME CRITICS CHARGE THAT THE LAW ISN'T intended as a general assault on the First Amendment: It's a thinly masked attempt by frightened white power brokers to muzzle specifically the discontent of young, mostly African-American, voices. Oddly, those charges come most strongly from the white spokespeople representing the recording industry—which sells a large amount of these records to white adolescents, who aren't accused of turning their neighborhoods into battlegrounds as a result.

"When Rooney and his ilk say the word *music*, it's code for rap," insists Paul Russinoff, director of state relations for the Recording Industry Association of America in Washington, D.C. "A lot of people are uncomfortable with young African-American males speaking their minds."

Elijah Anderson, an African-American professor of sociology at the University of Pennsylvania, says that opposing the law is "only superficially" about freedom of expression. The larger issue is "class control....Rap music is often a poetic way of representing the conditions of class that have developed between those in inner cities and those who have deserted them." Whites fear what they see happening in the inner cities—an increasingly downward spiral in quality of life, hopelessness, and violence. So far, this rarely affects them directly, and they want to stay as far away from it as they can. But rap music brings it into their living rooms. To stay secure from the disturbing message, Anderson says, white politicians try to censor the source: the rappers.

ROONEY CALLS THE RACIAL ALLEGATIONS "baseless" and "ridiculous," saying the recording "wouldn't be labeled according to the race of the artists, just the violence of the lyrics." He also points to the fact that many black activist organizations have joined in supporting his bill.

Despite the claim by politicians that the law would curb sales, some record store managers say such a ban might actually *increase* sales. They point to Ice-T's controversial CD *Body Count*, which contained the song "Cop Killer."

The Snoop Doggy Dogg reading before the House Judiciary Committee, in fact, happened when C. Delores Tucker of the National Political Congress of Black Women attacked Snoop, claiming his lyrics are fouler than anything you'd overhear in a men's locker room. To illustrate her point, she brought a blow-up of some of the offending lyrics and offered $100 to anyone who dared read the words out loud in public. A white man, Randy Lee Payton, co-founder of Rock Out Censorship, an Ohio-based anti-censorship group, leapt to the challenge, but he was silenced by the Judiciary Committee's chair. Tucker never paid up.

The scene graphically illustrates the point that even the racial debate is not simply a matter of black and white. Many buyers of this purported music of black rage are adolescent whites. And some of the strongest support for the bill comes from black leaders whose communities are hardest hit by a new generation of teen violence. That violence, many of them contend, is encouraged, even promoted, by lyrics often found in rap music.

"Obviously this type of music has an impact on young people," declares Thomas A. Smith Jr., president of the Pennsylvania State Conference of NAACP branches, who testified in favor of the bill. "There is an association between this kind of music and violence, and where is that violence taking place? Primarily in minority communities. The recording industry just wants to make money, and if it's off the blood of the black and Hispanic communities, who cares?"

But the cause-and-effect link between rap music and violence is weak. For every scholar who offers research that the link exists, another will offer research to dispute the claim. After centuries of debate, we're still not certain whether life imitates art, or art imitates life. But after all these years, lawmakers still think they know what's best for all of us to see or hear.

One of the worst side effects of proposals like Rooney's—whether or not it ever becomes law—is the effect it could have on *keeping* art from imitating real life. If opponents are successful in creating an atmosphere of apprehension about certain kinds of music that discuss violent realities, companies may become less willing to take financial risks on controversial music genres. And if recording companies become more conservative in what they'll sign up, regardless of public interest, artists may have to self-censor their work to sell it.

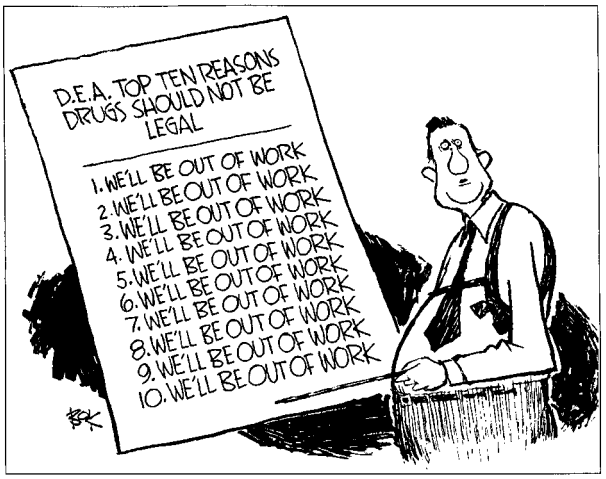
Which may be exactly what the Pennsylvania Legislature has in mind. (Remember those statues.)

Mubarak S. Dahir is a columnist for the Philadelphia Daily News. *His work has also appeared in* Time, The Progressive, *and* America's Censored News.

Mock Debate

By Jacob Sullum

A DEA manual on how to argue against legalization shows lack of imagination.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2. WE'LL BE OUT OF WORK
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"LEGALIZATION OPPONENTS often have a hard time being heard," complains the Drug Enforcement Administration in its manual *How to Hold Your Own in a Drug Legalization Debate.* "This is a long and difficult effort we are undertaking to get our issues on the table to be heard."

The DEA's pose as the underdog in the drug-policy debate is hard to take seriously. But the fact that the agency feels a need to help supporters of prohibition counter the arguments for legalization suggests that ignoring or dismissing critics of the war on drugs is no longer a viable option. The 42-page debating manual reveals drug warriors scrambling to back up claims that have long been accepted as articles of faith.

The DEA wants to appear logical and reasonable, the better to help prohibitionists persuade the public. "Proponents of legalization," the manual says, "are generally well-prepared and credible people whose arguments, though compelling, are faulty." But the DEA betrays a certain impatience with people who refuse to get with the program: "For those engaged in the day-to-day work of the real solution to America's drug problem—reducing the supply and the demand for illegal drugs, as well as addressing the criminal activity caused by drug trafficking and use—taking time out to discuss legalization questions can be frustrating."

Torn between these two attitudes, the DEA can't quite decide how to portray its opponents. "Many who advocate legalization are attempting to 'normalize' the behavior of drug taking," it says. "Many are people who have tried drugs without significant adverse consequences. Others see potential profit in legalizing drugs and still others simply believe that individual rights to take drugs should be protected.... [T]he legalization concept appeals to people who are looking for simple solutions to the devastating problem of drug abuse." Thus, in the DEA's gloss, critics of prohibition consist largely of druggies and would-be drug dealers. A few of these people seem to think there's some sort of principle at stake, but they're pretty simple-minded.

AS THIS TREATMENT SUGGESTS, THE DEA manual makes only a half-hearted attempt at intellectual honesty. Its advice to defenders of the war on drugs can be summed up in two injunctions: 1) misrepresent your opponent's position and 2) blur important distinctions.

In the first category, the manual asserts that "a cornerstone of the legalization proponents' position is the claim that making illegal drugs legal would not cause more of these substances to be consumed, nor would addiction increase." I don't know of a single serious critic of prohibition who makes this claim. The use of the currently illegal substances would almost certainly rise if they were cheaper and easier to obtain. The issue is how big the increase would be and how much harm it would cause.

Similarly, the DEA says reformers "fail to mention that unless drugs are made available to little children, law enforcement will still be needed to deal with drug sales to minors." In reality, advocates of legalization tend to emphasize this point, lest they be accused of recommending that crack be sold to kids in candy stores.

Pace the DEA, reformers do not argue "that legalizing drugs would eliminate the black market." They concede that as long as sales are restricted to adults, an illegal market would persist. But they note that the problems associated with it would be much smaller.

In its discussion of the connection between drugs and crime, the DEA plays bait and switch: "Criminal activity would not be *reduced* as a result of drug legalization any more than gangster activity *disappeared* after the Repeal of Prohibition." (Emphasis added.) This is logically equivalent to saying that brushing twice a day will not reduce cavities, since putting fluoride in the water has not eliminated tooth decay.

IN PREDICTING HOW LEGALIZATION WOULD affect crime, it's important to distinguish among the various reasons why crime might be associated with drugs. The DEA, however, tends to throw them all together: "It is widely claimed by those advancing the cause for legalization that crime is largely committed by drug traffickers to protect their turf. Sadly, it is the experience of many local police officers that crime is committed not only because people want to buy drugs, but more often because people use drugs." Elsewhere the

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guide asserts that "most drug violence is committed by people under the influence of drugs."

The DEA seems to be suggesting that psychopharmacology is the main reason for the association between drugs and crime. But it does not offer any evidence on this point, aside from "the experience of many local police officers." That "experience" is contradicted by broader research. A study reported in the winter 1989 issue of *Contemporary Drug Problems*, for example, found that the vast majority of crack-related homicides committed in New York City during an eight-month period in 1988 grew out of black market disputes. Only one of the 118 crack-only murders was classified as psychopharmacological.

To bolster its argument that drugs and crime are inextricably linked, the DEA cites figures indicating that a disproportionate number of criminals use drugs and that crimes are often committed by people who have recently taken drugs. But these correlations do not prove that drugs chemically induce people to commit crimes. There are several alternative explanations.

First, since possessing illegal drugs is itself a crime, drug users are "criminals" by definition. Second, drug dealers are apt both to use drugs and to get into violent disputes with each other—a hazard of the black market. Third, addicts may commit crimes to support their habits. Fourth, people who break the law in other ways are also more likely to consume illegal drugs. Fifth, people who plan to commit crimes may "fortify" themselves beforehand (most commonly with alcohol).

Beyond confusing correlation with causation, the DEA fails to distinguish between drug use and drug abuse. It refers, for example, to "the social costs of increased drug use." But drug use needn't generate *any* social costs. Someone who drinks a cup of coffee (or coca tea) in the morning and drinks a bottle of beer (or smokes a joint) after work is not imposing costs on anybody. Why should he be thrown in with the cokehead who screws up at work or the drunk driver who runs over a pedestrian?

BECAUSE IT REFUSES TO ACKNOWLEDGE that some kinds of drug use are preferable to others, the DEA ignores the crucial role of substitution in determining the results of legalization. To the extent that heavy drinkers become heavy marijuana users, or crack users turn to cocaine powder, they and the people close to them will tend to be better off. The DEA is blind to such possibilities, insisting that legalization can only "compound our problems."

The DEA also shows a lack of imagination when it tries to envision how drugs would be produced and sold in a legal regime.

"If U.S. farmers were given subsidies to produce drugs (as they are given subsidies for tobacco)," the manual warns, "the U.S. taxpayers would be responsible for paying for these subsidies. If foreign sources of drugs (opium or coca) were allowed to supply the raw material, an elaborate system of tariffs and trade preferences would need to be established." And then there is "the cost of collecting revenues associated with drug sales"—who would pay for that?

The 18 questions that the DEA expects will reveal "the shallowness of the legalization concept" actually reveal the shallowness of prohibitionist thinking: "Should all drugs be legalized?...Will they be limited only to people over eighteen?...Who will sell drugs? The Government? Private companies? And who is liable for damages caused by drug use and the activities of those taking drugs?... How will a black market for cheaper drugs be controlled?...How will absenteeism and loss of productivity be addressed? ...Will legal drugs require prescriptions?" And so on. Anyone who has given the issue serious thought will be able to answer these questions readily.

The litany serves not so much to stump critics of prohibition as to keep them on the defensive. "Always remember," the guide advises, "the burden of proof is on the proponents of legalization." Lucky for the DEA.

Contributing Editor Jacob Sullum is articles editor at National Review.

Overdue Process

By David G. Post

Overcoming Law, by Richard A. Posner, Cambridge: Harvard University Press, 597 pages, $39.95

Richard Posner: "A judge's philosophical or religious or economic or political views are bound to shape his response to specific cases."

WHAT ARE WE TO MAKE OF RICHard Posner? His intellectual output is, by any measure, extraordinary. Appointed to the federal Court of Appeals in 1981 (where he continues to serve, now as chief judge of the Seventh Circuit in Chicago), Posner has authored more than 1,000 majority opinions—an annual rate approximately three times greater than the national average for appellate judges. Despite this output, no decline in quality relative to the average is in evidence; Posner is generally recognized as one of the more influential appeals court judges in the nation, and his opinions are cited by courts in other federal circuits more than four times the average.

His scholarly output is similarly prodigious. He has authored dozens of articles, along with 19 books prior to publication of the volume under review, and though he is best known as one of the founders of the "law and economics" movement, he has tackled a fairly dazzling array of subjects, from a literary analysis of the depiction of legal proceedings in such works as Kafka's *The Trial* and Melville's *Billy Budd*, to jurisprudential philosophy, to the way that issues of sexual conduct should best be handled by legislators and the judiciary.

Posner is always on the lips of the Great Mentioner (to use Russell Baker's phrase) whenever there is a Supreme Court vacancy, but he is always stricken from the list because of his ostensibly too-rightward-leaning, and altogether too "controversial," views ("Posner? Isn't he the guy who wants to buy and sell babies?"). His standing within the legal profession is oddly tenuous; though many agree with Jeffrey Rosen of *The New Republic* that "in a perfectly meritocratic world, a delegation of senators from both parties would fly to Chicago with a signed Supreme Court commission and lay it respectfully at Posner's feet," the American Bar Association grudgingly gave him only a weak "qualified" recommendation when he was first nominated to the bench. And a recent report from the Chicago Council of Lawyers complains that he demonstrates a "contempt for attorneys and...litigants" and suggests that a lack of practical experience leads him into such unprofessional conduct.

SO WHAT IS THIS GUY UP TO, ANYWAY? *Overcoming Law* has some tantalizing clues. The bad news first. Posner's latest is largely a compendium of previously published work; there is nothing wrong with that, of course, except that, as with most such compilations, it lacks a certain concentration of focus. Reflecting the breadth of the author's interest, the book ranges widely through the law and beyond. There is a particularly interesting chapter comparing the "original intent" school of constitutional interpretation to the "original instrument" movement in classical music, as well as digressions into such areas as the behavior of Nazi judges, the portrayal of the legal system in *Bonfire of the Vanities*, application of Hegelian philosophy to contract law, and the social and political institutions of medieval Iceland. But it is sometimes difficult to identify the themes from which these are in fact digressing, to find amid this smorgasbord some unifying idea.

But there is such a theme—and it is an important one. It is not, as one might have expected, the virtues of the economic approach to law. To be sure, the book has a healthy dose of economic reasoning, including an attempt to describe judges' adherence to precedent as a function of the trade-offs between the "consumption value" each judge obtains by exercising discretionary voting power in individual cases, the value individual judges place on leisure time, and the effect of particular modes of judicial behavior on a judge's overall reputation.

But I believe that Posner is clearer here than in any of his previous work that there is—that there *must be*—more to the practice of judging than economics, or any similarly formal deductive system, can provide:

"Not all questions that come up in law, however, can be effortlessly recast as economic questions. Cases involving the regulation of sexuality and reproduction furnish endless illustrations. The economist has great difficulty getting a clear 'fix' on such questions. The costs of forcing a woman to bear an unwanted child are readily analyzed within an economic framework, but what of the costs to the fetus of being aborted? Whether those costs...shall be counted at all depends on whether fetuses are deemed part of the community whose welfare is to be maximized. That question...cannot be answered within economics....[W]hether abortion is wealth maximizing depends on whether the right over the fetus's life is assigned to the fetus or to the mother; and that determination—the locating of

the boundaries of the community whose wealth is to be maximized—cannot be made within economics any more than the economist can decide whether the goal of our society should be to maximize the wealth of the United States or the wealth of the entire world."

It's a kind of Gödel Impossibility Theorem for the law: You can't answer the hard questions from *within* a deductive system, whether it be economics or formalist jurisprudential conceptions of the "logic of the law," because no such system can adequately prove or conclusively establish the very suppositions on which it is based. At some point, "even one strongly committed to the economic approach to law will have to take a stand on issues of political and moral philosophy."

Posner does indeed take his stand—ta da!—on the side of a kind of moral libertarianism, what he calls "Millian liberalism," a belief that behavior that does not palpably harm others should not be suppressed: "Your rights end where my nose begins." While Posner's own choice is probably of little interest (except to many readers of this magazine, who should be delighted to have so distinguished a guest in their philosophical midst), his focus on the primacy of the "moral" component of decision making has interesting practical consequences for more general questions of how judges should go about interpreting the law.

ONCE ONE ACKNOWLEDGES THAT JUDGING is a moral act—that even judicial action is subject to those "deepest values" that "live below thought and provide warrants for action even when we cannot give those values a compelling or perhaps any rational justification"—one must consider that in a society such as ours, there is (thankfully) no single conception of the good or the just that holds sway. Judges, like any other collection of reasonably thoughtful people, will necessarily bring a maddeningly diverse set of often unarticulated and perhaps inarticulable philosophical or religious or political views to the table when called upon to make the tough calls. There is no use pretending that somehow a magic analytical wand can be waved to cause them to drop that baggage at the courthouse door; indeed, Posner exhibits something resembling contempt for the notion that judges are deductively "reasoning" within some vast, mysterious, top-down, and self-contained logical system known as "the Law."

Posner calls his approach "legal pragmatism," one that is more interested in the actual empirical consequences of legal rules than in their fit within existing legal dogma and doctrine.

But that, in turn, seems to sanction just the kind of "unprincipled judicial activism" that conservatives like Posner are supposed to despise. Posner does not shrink from this view; indeed, he looks at it with some relish. He writes:

"I do not object to judges' stretching clauses—even such questionable candidates as the due process clause—when there is a compelling practical case or imperative felt need for intervention....It is easy for legal professionals, and intellectuals of every stripe, to ridicule [an approach that locates] a ground for judicial action in instinct rather than analysis. They can ridicule it for its shapelessness, its subjectivity, it noncognitivism, its relativism, its foundationlessness, and its undemocratic character unredeemed by pedigree or principle. But the alternatives are unpalatable...."

And, a few pages later: "No doubt a judge ought not to use the freedom of his office to try to impose wholesale the natural-law views of Aquinas, or for that matter of Herbert Spencer, or the utilitarian philosophy of Bentham, or even that of Mill, on the nation in the name of the Constitution. Tolerance and restraint are important virtues in judging. But a judge's philosophical or religious or economic or political views are bound to shape his response to specific cases in the open area where judicial decision-making is discretionary. How else are such cases to be decided? The values that all reasonable and rational people in our society endorse make too thin a gruel to resolve the difficult cases. The danger of judicial tyranny should not be exaggerated: The heterogeneity of our society, which is reflected in the composition of the judiciary, prevents judges from legislating comprehensive doctrine."

The great judges—Marshall, Holmes, Brandeis, Cardozo, Black, Harlan—Posner reminds us, "have enriched political thought and practice precisely by bringing controversial values, whether of an egalitarian, populist, or libertarian cast, into the formation of public policy," using their judicial office "to stamp the law with a personal vision."

BUT WHAT THEN OF ECONOMICS? IF JUDGing is about values, and if economics can't help supply those values, what's the point? The point is that however little sway economics may hold at the level of competing moral values, it should loom large in the world of fact and counter-fact, as a means to examine the practical consequences of alternative formulations of legal rules so that, at least, judges can make an informed choice among them (based ultimately, again, on the contours of their own moral universe).

Posner calls his approach "legal pragmatism," one that is more interested in the actual empirical consequences of legal rules than in their fit within existing legal dogma and doctrine. What will the world—the real world of human behavior and human interaction, not the world of legal doctrine—actually look like if, say, homosexual marriages are permitted (chapter 26, "Economics and the Social Construction of Homosexuality")? If employees are granted enforceable "rights" to continued employment (chapter 13, "Hegel and Employment at Will")? If blackmail were not a criminal offense (chapter 25, "The

Legal Protection of the Face We Present to the World")?

Other disciplines—history, biology, sociology—may have much to say about these matters, and *Overcoming Law* is an extended plea for more (and higher-quality) interdisciplinary analyses of legal issues so as to get a better handle on that which counts—empirical consequences of alternative legal rules. If I am asked to decide a case about involuntary confinement of the mentally retarded, Posner is saying, teach me about the social conditions of confinement, about pharmacology and other treatment methods, about the relative costs of different treatment strategies—but don't harp on some formal exegesis of the Due Process Clause.

WILL THIS APPROACH "OVERCOME" law? It's a somewhat curious choice of a title, since we normally look to our judges to apply, interpret, or analyze law—but not to "overcome" it. But I suspect that Posner is speaking of breaking the increasingly artificial and counterproductive headlock in which the law—at least, the kind of doctrinal analysis practiced by most academics and judges—has held this mode of inquiry. Law, in Posner's vision, becomes part of a more conversational mode of inquiry, an extended debate in which we are all—not just the lawyers—invited to participate.

It is, to this reader, a strikingly appealing vision of the nature of legal process, but it is one unlikely to be warmly embraced by the opinion makers inside the legal community. Someone who describes the *Harvard Law Review* as "on its way to becoming a laughing stock"; who suggests that the typical law professor is "immersed in increasingly mediocre texts [to which] he applies analytical tools of no great power—unless they are tools borrowed from another field"; and who compares the organized bar to a medieval craft guild, mocking those who whine about the practice of law no longer being any "fun" by pointing out that competitive markets—which the law is slowly becoming, to the horror of many—are "no fun at all for most sellers"—such a man is not on his way to being beloved by his peers. But his ideas are surely worth a look, in spite of—or probably because of—that.

David G. Post (DPost@eff.org) teaches constitutional and copyright law at the Georgetown University Law Center.

Gregg Easterbrook: He questions green orthodoxy, but doesn't ask all the right questions.

Nature's Nature

By Alexander Volokh

A Moment on the Earth: The Coming Age of Environmental Optimism, by Gregg Easterbrook, New York: Viking, 745 pages, $27.95

IN THE MINDS OF CERTAIN ENVIRONMENTALISTS, *the environment* is a grand term, which encompasses the entire universe. Except for man. In "the environment," species can prey on others and gain at other species' expense. Only man is judged by a different standard. "The environment" is peopled with intelligent-seeming creatures, such as dolphins, monkeys, and beavers, which use tools, build structures, and have some understanding of the world around them. Man alone is denied this dignity. True, there are reactionaries in human society who believe that man, by virtue of being a rational being, has certain inalienable rights, and that people should be able to keep what they produce and associate with others for mutual benefit. But the environmental movement scoffs at such notions. Only "the environment," which has no values, has rights—and those are inviolable.

As Gregg Easterbrook points out in *A Moment on the Earth*, mystical notions of the environmental movement do no good, either to ourselves or to the earth. What we need, he says, is a healthy dose of "ecorealism." "The core principles of ecorealism," he tells us, "are these: that logic, not sentiment, is the best tool for safeguarding nature; that accurate understanding of the actual state of the environment will serve the Earth better than expressions of panic; that in order to form a constructive alliance with nature, men and women must learn to think like nature."

Former EPA chief William Reilly has called *A Moment on the Earth* "the most influential book since *Silent Spring*," the Rachel Carson work that launched the apocalypse-mongering environmental movement. Given the sort of press *Moment* has been getting, Reilly's encomium may be correct.

Easterbrook, a contributing editor of *Newsweek* and frequent presence in *The Atlantic Monthly*, is a prominent neoliberal who has distinguished himself by, among other things, being the only major writer to vocally praise the Canadian health care system. With this book, though, he sets himself apart from the mainstream environmentalist movement, which has gotten bogged down in Chicken Little tactics and divorced from most Americans' vision of environmental protection. Yet he has no kind words for conservative anti-environmentalists (whom he calls "unviros"). Accordingly, the book is guaranteed to be either praised or panned by every TV show, newspaper, and magazine worth its salt—and some-

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times both praised and panned simultaneously. (See, for instance, this article.)

The first myths Easterbrook takes on are the easiest to attack—claims that are factually false. The environments of Western countries have been getting cleaner at the same time that most people think they've been getting more polluted. Judging from current trends, pollution in the Western world will end within our lifetimes. Most people think that developed countries are the environmental rogues, but in fact they're much cleaner than developing nations. Runaway global warming almost certainly won't happen. Same goes for scary ozone depletion scenarios and most other feared catastrophes. American forests are expanding. Technological progress is a good thing: Most new technologies are more efficient, use fewer resources, produce less waste, and cause less ecological disruption than old ones.

Myths based on bad facts can only be countered with good ones, of which Easterbrook has plenty. Asbestos, Alar, DDT, and PCBs—poisons of man—are no more dangerous than arsenic, cadmium, and lead—poisons of nature. We've got 128 million more acres of forests today than we did in 1920, and paper-company–owned-and-managed forests have more biodiversity than the revered old-growth forests. Factories are more sustainable than subsistence agriculture. There's no clear relationship between how close you are to toxic wastes and whether or not you'll get cancer. Air quality in major urban areas is getting better, not worse; ozone (the bad kind), a major air pollutant, has gone down 40 percent since 1970 in Los Angeles, even as the car population has tripled.

THEN THERE ARE THE SUBTLER MYTHS about the nature of the environment and the relationship between man and nature. The most pervasive one is that nature is fragile. It isn't: "Were the environment fragile it would have expired many eons before the advent of the industrial affronts of the dreaming ape. Human assaults on the environment, though mischievous, are pinpricks compared to forces of the magnitude nature is accustomed to resisting," writes Easterbrook.

Two corollaries to this myth are the "environmental correctness" and the "stop-in-place" myths: the idea that there is a correct environment and that if only we preserved nature, it would stay that way forever. But there's no such thing as the "correct" environment; "every environment and habitat comes into existence fated to end," Easterbrook reminds us.

Another widespread myth is that nature is benign. It isn't, and is certainly worse than people. As mothers go, Mother Nature has more in common with Joan Crawford than Donna Reed.

Another widespread myth is that nature is benign. It isn't, and is certainly worse than people. "Flooding land to make the James Bay power reservoirs unquestionably kills a tiny percentage of the plants and animals of subarctic Quebec; the Laurentide ice sheet once killed 100 percent of the surface creatures that lived there," says Easterbrook. As mothers go, Mother Nature has more in common with Joan Crawford than Donna Reed.

The worst myth, though, is that there's a conflict between the artificial and the natural. There isn't. Artificial chemicals are made of the same stuff as natural chemicals. To condemn a substance, we have to know what it does. Whether it comes from a forest or a factory is immaterial. And there's no inherent conflict between man and nature. "To reject the human presence as unnatural evinces fundamental misreading of the character of the living world," Easterbrook charges. "Humankind springs from the natural scheme just as does any beast or plant."

Easterbrook is right on target here in his enviro-bashing. The news on all of the traditional environmental problems is almost uniformly good, and yet environmentalists talk as if we're doomed. "Is everybody talking about the same world?" he asks.

BUT EASTERBROOK OFTEN MISSES THE mark. For instance, he has an incomplete understanding of the notion of tradeoffs. In reality, you can't always get what you want; policies have unintended consequences and plans designed to help can end up hurting. Sometimes, Easterbrook knows this: "Certainly it is possible to become oversensitive to environmental protection and spend more than necessary, given society's other needs....Asbestos regulation costs up to $49 million per premature death avoided. This sum adds a hypothetical few years to the ends of a few people's lives, when the money might be invested in education, health care, crime prevention, or other social needs with much better paybacks."

At other times, though, Easterbrook talks like this: "Toxics cannot possibly be good for us or the ecology. That's all we really need to know to justify a goal of zero toxic discharge." Easterbrook qualifies himself with phrases like "wherever practical," which are always correct and usually unhelpful. He never tells us how we figure out when something is practical (or why government knows better than individuals when something is practical). He doesn't tell us why toxics aren't good for us. It seems to need no proof, but it does, mainly because it's not true—everything is dangerous at some dose and harmless at another. And while Easterbrook recognizes that there's no inherent difference between natural and synthetic chemicals, I can't imagine him advocating "zero natural chemical production."

In economics and the environment, Easterbrook likes the "reasonable"—that which is "attainable politically and bearable economically." *Reasonable* and *bearable* are more words that mean less than they seem; they don't even tell us whether we're moving in the right direction.

And Easterbrook is only selectively pro-moderation. With acid rain, Easter-

brook defends the EPA for seeking only moderate air emissions reductions. But he whistles a different tune on the pesticide Alar. He concedes that the case against Alar was based on shoddy science. But "society is better off without Alar" because "Alar was used mainly to make apples extra red instead of only sorta red, and who really cares about that?"

Well, apple buyers seem to care about that, and so do apple growers. I'm more likely to buy a bright red apple than a dull red apple. Alar also inhibited the growth of some bad apple fungi, which are worse for your health. So eliminating Alar may have actually harmed the public health by giving us fewer and more dangerous apples. But you wouldn't know it from this book. Easterbrook also likes that the Alar flap made the EPA more responsive to the public. Not a word on whether it's a good thing for agencies to be more responsive to public hysteria over nonexistent threats.

Easterbrook grants that scientists don't know what causes cancer or whether a 1-in-10,000 risk is better than a 1-in-1,000,000 risk. But since toxics are *obviously* bad, the question is merely: "How much protection can we afford?" In other words, it's *always* good to eliminate even the most hypothetical threat, as long as it doesn't plunge us into a depression. No talk of what's a negligible risk; no talk of balancing costs and benefits; no talk of whether growers have a right to use pesticides and let those who don't like it buy organic. Moderate? Reasonable? Hardly.

THERE'S A DEEPER FLAW HERE. EASTERbrook can't answer a basic environmental question: "How do you know when something is bad for the environment?" According to Easterbrook, there is "a wide range of human actions careless, selfish, or destructive to the environment." That's a statement that few would argue with. But what is that wide range of actions? To Easterbrook, things are bad for the environment when they harm "the integrity of nature."

Of course, just saying that is of no help. A radical environmentalist like Bill McKibben might say that any rational human act harms the integrity of nature, because a) we're not part of nature, b) nature is random and spontaneous, and c) nature is fragile. Easterbrook can't say that, since he's rejected all three points of that philosophy. We're part of nature, rationality is our natural gift, and nature is robust. Phrases like "the integrity of nature" should be especially problematic for Easterbrook, with his tirades against the myth of Environmental Correctness. If nature has no proper state, how can you tell when it's doing badly?

Easterbrook's answer is subtler than the radical environmental notion, and, in a way, less satisfying. To say that an action toward nature is "wrong" requires a set of values by which to judge which actions are "right" and which ones are "wrong." Easterbrook's approach is to derive values from nature by "thinking like nature." He reveals his grand scheme of the universe in such statements as: "All impertinent actions by genus *Homo* combined have yet to produce anything approaching the environmental damage nature inflicts on itself on a recurrent basis." Even nature can do bad things. "Natural" values may be derived from nature, but even nature doesn't always follow them.

This exercise reveals more about himself than about nature, because what he's doing is reading his favorite values into nature. Whatever Easterbrook likes, nature is "striving for"—life, cooperation between species, self-awareness. For instance, "acquiring consciousness is what nature has been up to these 3.8 billion years." Whatever he doesn't like is a "structural flaw"—death by natural catastrophe, death by predation, death by disease, competition between species, the eating of meat (especially veal).

Of course, by choosing the right structural flaws, one can prove anything. For instance, he says, "To nature the circumstances of this solar system must seem fundamentally *wrong*. Nature wants life: On our world nature has shown unmistakably that it wants the maximum amount of the ecology to live." But suppose I said the opposite: "To nature the circumstances of Earth must seem fundamentally *wrong*. Nature abhors life: In the rest of the universe nature has shown unmistakably that it wants nothing but inanimate objects." Which statement is more correctly derived from nature?

In short, you can't derive values from nature without contaminating them with your own values. Easterbrook makes his personal values clear from the beginning: "The first round of environmental investments did not fail; they worked, which is a great reason to have more. I consider this glorious if only because as a political liberal I long for examples of government action that serve the common good. The extraordinary success of modern environmental protection is such an example: perhaps the best instance of government-led social progress in our age."

EASTERBROOK'S VISION OF SOCIAL PROGress generally is a government-led one. Cooperation is better than competition; let's alter animal genes to make them live in harmony! Eating vegetables is better than eating meat; let's produce synthetic meat! Killing is bad; let's change human genes to eliminate killing! (Of course, he qualifies himself: "[I]nstitutions of government must be reformed to the point of being consistently benevolent...before anyone in his or her right mind would endorse tinkering with the human gene line.") We shouldn't expose our children to pesticides that only make apples really red; let's remove Alar from society! Despite its declared goal, *A Moment on the Earth* isn't a study in *how to* think like nature; it's a study in how to think like Gregg Easterbrook.

It's possible to construct a system without such contradictions. For instance, a viable environmental philosophy could be based on the following notion: "Man is part of nature. Nature has no thoughts, feelings, or values. Therefore, we should do what we think is best, without regard for whether nature wants it. Our actions should be based on a certain theory of rights and a vision of the good life." Such a vision needn't be anti-nature. For instance, if you believe in preserving spe-

cies diversity or ancient forests, you can protect them and try to build a society that will do the same.

But if you want to protect species and discourage industrial civilization—or whatever your vision is—you should advocate it because you think it's a good idea. Bringing in the fiction of "thinking like nature" is merely an excuse for reading *your* values into nature and cloaking them with the veil of objectivity. Easterbrook is unwilling to drop the fiction, and his book, while at times factually interesting, is ultimately unconvincing.

Alexander Volokh (volokh@netcom.com) is an environmental policy analyst with the Reason Foundation.

Paine Killers

By Steven Hayward

The Death of Common Sense: How Law Is Suffocating America, by Philip K. Howard, New York: Random House, 202 pages, $18.00

THOMAS PAINE'S FAMOUS TRACT *Common Sense* helped ignite our original revolt against arbitrary rule. Comes now Philip Howard's *The Death of Common Sense* to add fresh fuel to the contemporary revolt against arbitrary *rules*. But recalling Tom Paine's understanding of what common sense about government entailed allows us to see that Howard's title is both apposite and ironic.

Like Paine's slender tract in 1776, Howard's book has struck a national nerve, soaring on the best-seller list, landing its author on *Oprah* (to debate the now-infamous McDonald's hot coffee case), and sending politicians from both parties scrambling to enlist Howard to their side. Bob Dole has had Howard in for a chat, and President Clinton got Howard to accompany him to a photo-op on cutting government red tape.

The Death of Common Sense is not recommended for people with high blood pressure or insomnia. It's loaded with splendid examples of regulatory and legal stupidity, and contains a blood-boiling outrage every few pages. Howard hits more targets than a gunman with an Uzi, all of them deserving. He blasts the Occupational Safety and Health Administration, local building restrictions, the Federal Aviation Authority, the Environmental Protection Agency, the State Department, and local health regulators. And that's just in the first 20 pages. My favorite bon mot is his tongue-in-cheek suggestion that we establish a bureaucracy to make life miserable for other bureaucrats, to be called the Bureau of Accusations, Stings, and Humiliations, or BASH.

Beyond his barbs at the Endangered Species Act, the Americans with Disabilities Act, tort litigation in general, and a host of other targets, Howard also makes clear how the nature of individual rights has been distorted by the contemporary rights industry. Rights, Howard reminds again, are rights against the law, not positive goods that government is obligated to provide for any and all claimants.

Others have made this point more analytically and philosophically, but Howard's anecdotal approach certainly makes it more vivid, which helps explain the book's great success, and great value. The "rights-as-claims" mentality easily blends into a scam, as Howard illustrates with the example of an out-of-service New York City transit bus hit by a garbage truck. Even though the bus was out of service and empty, 18 people claiming to be riders filed suit for injuries. Such scams often succeed, because of the perverse calculus of the lawsuit settlement game.

Howard quotes from Hayek's *The Constitution of Liberty*, and even from REASON's own Tom Hazlett. He offers some judgments of genuine aphoristic quality, such as: "Government accomplishes virtually nothing of what it sets out to do. It can barely fire an employee who doesn't show up for work." Or this: "Modern law has not protected us from stupidity and caprice, but has made stupidity and caprice dominant features of our society." Or, in a slightly softer vein: "Law must not promise to purge people's souls. It cannot. Law can set up the conditions for interaction and work toward changes over time. When it tries to do more, it only drives us further apart."

But Howard's prescription undermines the force of the book, and reveals that he hasn't quite gotten to the heart of the matter of what common sense ought to entail. He thinks the problem is that bureaucratic rule has squeezed out human judgment and good sense by limiting discretion and reducing choice through cumbersome decision-making processes. Hence, Howard says, "Relaxing a little and letting regulators use their judgment is the only way to liberate our judgment."

HOWARD ISN'T WRONG IN HIS ANALYSIS OF why bureaucratic rule doesn't work; trying to anticipate every possible contingency through a rule that will avoid partial or arbitrary treatment is a sure prescription for gridlock and inefficiency. But his remedy doesn't succeed in resurrecting real common sense about the matter: Once the premise of the regulatory state is accepted, we are destined to end up with the outrages of bureaucratic rule, no matter how wise and benign the administrators, and no matter how much discretion is allowed to mitigate the worst outrages. (In fact, allowing true discretion to bureaucrats is arguably worse than what we have now; aside from outright caprice, administrators will be hard pressed to avoid political favoritism. Even short of this problem, widening discretion might be an invitation for the further aggrandizement of the role of "experts" in managing society.)

For example, one of Howard's many attacks on OSHA involves a rule requiring that a dust mask have a close fit against the face, which caused an OSHA inspector to require that an Amish employee at a

brick factory shave his beard regardless of the fact that the dust hazard in the factory was minimal. The employee quit rather than violate his religious scruples. It's true that allowing a regulator's discretion to override the particular rule would permit a sensible solution in this case. But if we really believe in common sense, we should conclude that we are able to rule ourselves in our private lives and enterprises without any OSHA at all. That's what the original "common sense" about self-government taught.

If we really believe in common sense, we should conclude that we are able to rule ourselves in our private lives and enterprises. That's what the original "common sense" about self-government taught.

The common sense problem with the modern regulatory state is that it is based on the premise that "needs" are limitless, and therefore the growth and reach of the state is limitless: No problem or need is regarded as beyond the reach of the law, and an expert bureaucracy to execute the law. Howard comes close to recognizing that in many places in his book, but he shies away from making the categorical judgment that his argument invites; he never issues a Tom Paine–like clarion call to abolish the regulatory form of rule altogether, which is the only common sense solution that will suffice.

That said, *The Death of Common Sense* is a welcome book. It is another sign that government is falling into general disfavor. Such attacks help the cause of liberty, even if they don't offer a completely clear prescription for its restoration. ®

Contributing Editor Steven Hayward is research and editorial director for the Pacific Research Institute, a San Francisco–based think tank.

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Twenties-Something

By Gary Alan Fine

Terrible Honesty: Mongrel Manhattan in the 1920s, by Ann Douglas, New York: Farrar, Straus and Giroux, 606 pages, $25.00

GROWING UP IN NEW YORK CITY IN the 1950s and '60s, I had no doubt that my home town was simultaneously a part of and apart from the rest of the country: Manhattan represented both a distillation of American culture and a challenge to that culture. It was a site of diversity, a tough town, and, most of all, a place of promise.

Ann Douglas, a professor of English and comparative literature at Columbia University (ground zero of New York literary culture) is smitten with the lure and danger of Manhattan—not the Gotham of a dilapidated present, but the city in a decade of possibilities. In *Terrible Honesty: Mongrel Manhattan in the 1920s*, Douglas examines the decade she believes presents the American psyche in its most revealing moment, the period when America gained cultural and economic leadership of the West. With America's emancipation from foreign influences, celebration of its multiracial heritage, and overthrowing of matriarchy, the '20s represented a sea-change in American self-identity.

The Roaring '20s—particularly in New York, Douglas's focus—represent the end of Victorian gentility, the conclusion of the 19th-century feminization of American culture (the topic of her previous research). In the place of "feminized" culture, she argues, came a rough, individualistic masculinity that focused on a quest for excitement: an era of masculine figures, such as Ernest Hemingway, F. Scott Fitzgerald, Langston Hughes, Hart Crane, and independent and resourceful women such as Dorothy Parker and Zora Neale Hurston.

Douglas, borrowing the words of Raymond Chandler, labels the 1920s an age of "terrible honesty." American writers, artists, and thinkers were determined to shatter the preconceptions of a stable social order through their embrace of the primitive, the wild, the sexual, and the violent. If, as Hemingway believed, American culture had been excessively feminine, they were having none of it. They called for the overthrowing of the "Titaness," Douglas's image of the Victorian matriarchal figures who served as cultural monitors.

Douglas's masculinist cultural model is impressive and illuminating, but it sorely lacks a political dimension. The '20s were a political as well as a cultural watershed. Although the decade today is largely forgotten or derided, it represented the possibilities of a powerful, modern nation embracing an ideology of small government—a dramatic interlude of individualism after the interventionism of Woodrow Wilson and the progressivism of Theodore Roosevelt.

While the reputations of Presidents Warren Harding and "Silent" Calvin Coolidge have taken a beating from historians and the media over the years, they serve as exemplars of a commitment to a limited state that rejects both economic and moral intrusion. Harding's widely known flouting of Prohibition laws in the White House might be particularly cheering, were it not for the fact that he had supported the Volstead Act while in the Senate (albeit for political reasons and not enthusiastically). One can hardly imagine Clinton inhaling as openly as Harding imbibed.

The general public cynicism toward and evasion of Prohibition laws, enacted under the prim glower of Woodrow Wilson, proved to be the first open taste of popular rebellion against the belief that government knows best how citizens should run their private lives. Were it not for the crisis of the Depression and the resultant election of the expansive Franklin Roosevelt, modest expectations of government might be the rule, not the exception.

Ann Douglas: The Roaring '20s represent the end of Victorian gentility, the conclusion of the 19th-century feminization of American culture.

A society that embraces the idea of individualism, after all, has little need or love for a government that protects citizens from real or imagined risks. Both Harding and Coolidge are politicians whose personas are tied to masculine images: the clubby, hale fellow and the silent, unemotional male—dramatic contrasts with the softer, more cerebral Wilson (and his wife, who had enormous control over government operations in the aftermath of his stroke).

ADDITIONALLY, TO UNDERSTAND FULLY the '20s, we must recognize that dramatic changes in media profoundly affected American culture. Two innovations at the start of the decade (one entrepreneurial, one technological) fundamentally changed the ways that Americans came to share each others' lives and to understand each other. The invention of the tabloid newspaper—starting with the *New York Daily News* in 1919—created a jazzier manner of reportage that appealed to a broader spectrum of the citizenry. Such a medium expanded the knowledgeable public, allowing for a wider collective focus and popular discourse.

Along with the creation of the tabloid

ELIZABETH KENDELL

newspaper came the development and expansion of commercial radio broadcasting—another mass medium largely outside government control. As the decade progressed, radio quickly spread across the nation, knitting the American citizenry into a public community. For the first time, people were able to hear events in "real time," as part of a single audience—listeners who shared attention.

These were significant achievements in the process of edging toward a nation that could be shaped by events that were created or directed by a national media. The '20s were an age of sensation, a time of crazes. To think of the 1920s is to recall the series of "Trials of the Century" that shook and fascinated the republic: the Fatty Arbuckle scandal, the trial of Sacco and Vanzetti, the Leopold and Loeb case, and, of course, the Scopes "Monkey" trial. One cannot think of a set of trials from previous decades that so transfixed the American public and entered into our cultural history. From the '20s forward, however, public attention could be and is swayed by sensational cases—such as the Lindbergh baby kidnapping, the Rosenberg spy trial, the Manson family murders, and today's O. J. Simpson trial—that resonate with the public mood, feeding a cultural logic of spectacle.

The impact of the Teapot Dome "scandal" on American political life, leading to what Will Rogers termed "the Great Morality Panic of 1924," similarly reveals a sensationalist streak that still reverberates in contemporary political discourse. Add to this the enshrinement of national cultural heroes: Babe Ruth, Bill Tilden, Red Grange, and, not least, Charles Lindbergh, and one recognizes a nation increasingly becoming self-conscious. Because of the new media, America has become a culture of heroes and villains, but perhaps more significantly a culture of familiar strangers, public figures whom we *know* without ever having met. These relationships simultaneously connect us to our culture and allow us to feel we have the right and privilege to intrude into their privacy.

A word of caution: Cultural segments do not change in parallel sequence without resistance. In *Terrible Honesty*, Douglas wavers between telling a story of New York and a story of America, a story of literature and a story of politics. Ostensibly, her topic is the literary culture in New York, but in desiring to construct a narrative about dramatic national transformations, she slips into a review of American life. Once she crosses the Hudson, however, she loses the descriptive detail that would prove (or disprove) the case for the country as a whole. While Douglas's masculinizing model is a plausible explanation for much of what was going on during the '20s, care is warranted in extending that analysis to the country as a whole. Broad brushes can make messy painting.

Indeed, to a greater extent than Douglas has attempted, understanding the 1920s involves coming to terms with the battles over Prohibition and over women's suffrage as focuses of the struggle for gender dominance. Simultaneously, women became fully incorporated into the body politic and the government took on the role of deciding which beverages free men and women should ingest. The two constitutional amendments that began the decade are plainly victories for the matriarchal political ideology that Douglas suggests is soon to be routed.

IT SEEMS CLEAR THAT THE ULTIMATELY SUCcessful effort against Prohibition supports the idea of a turn in America toward a masculinist culture. And yet the rapid passage of the 18th Amendment, the struggles over its enforcement, and the continued presence of prohibitionary impulses regarding other substances surely indicate that the victory was incomplete. Similarly, bringing women into the polity "masculinizes" them in the sense of giving them a distinct stake in the political process. But it also provides the ideology of gentility with a political base, presaging today's political gender gap: a point not to be lost on the primarily masculine libertarian movement.

Had Douglas showed a fuller recognition of the scene outside of New York (and urban areas in general), she might have exercised more interpretive prudence. What is happening in New York, important though it is for the growth of American culture, does not always map onto movements throughout the land. Douglas claims an American exceptionalism—a unique quality to American life, essentially a national character. Yet, to make this claim is to ignore the gaps between Southern religious revivalism, the spread of the Ku Klux Klan in the industrial heartland, the battles over Hollywood and its scandals in the Pacific West, and the remnants of progressivism and populism on the plains.

Certainly, New York is in part a microcosm of the rest of the nation, but it is also a distinctly different world: a world in which race, religion, and gender politics played themselves out in ways that much of the rest of the nation would find repugnant. To focus on Manhattan culture hardly explains the nationwide Republican ascendancy throughout the decade: To ignore the economic structure of the society downplays the effects of the remarkable years of prosperity: an economic record as significant—if less dramatic—as the crisis of confidence provoked by the Depression that followed. Good news always bows to bad.

Perhaps the greatest lesson of the '20s is in the possibilities of freedom. This lesson is drawn most dramatically in Douglas's description of the flowering of Harlem's African-American culture but is equally apparent in downtown literary cultures, and in laissez-faire politics. For a time, most Americans felt that freedom was theirs, without the burdens of a communal culture or intrusive government. It is a lesson with which we struggle every few decades, always to be reined in by those forces that suggest that others know best. Honesty can be terrible to the guardians of morality. ®

Gary Alan Fine is professor of sociology at the University of Georgia. He is the author of Manufacturing Tales: Sex and Money in Contemporary Legends *(1992), and is currently studying scandals of Hollywood and Washington.*

Laughing Stock

By Thomas W. Hazlett

Funny is as funny was.

A LOCAL FEMINIST TALK SHOW host, since fired for poor ratings, began her program a couple of years back with a description of a cartoon she had seen in the newspaper. I don't recall the subject matter, but I remember the most perverse exclamation point. No sooner did she chortle out the punchline caption than she issued a sharp disclaimer: That's not really funny!

Really? I can understand why someone would tell a story they really believe Stupid & Offensive: We all love a good laugh. In fact, eliminate these two guffaw-filled categories of human endeavor, and the species becomes unbearable. But what to make of the anti-humor reflex exhibited by The Upright, even after they have personally selected the very ugliness in question?

The recent pip-squeaked whining over the evils unleashed by talk radio has reminded me of this sensational demonstration of the confusion which now reigns over America like a despotic king. Predictably, Mr. Clinton led the idiotic charge in cowardly fashion, moving in behind the corpses of Oklahoma City to declare that his political foes have created a climate of hate and governmental mistrust. In linking dissent from his administration to hatred for America, the president fantasizes so mightily as to make Dr. Ruth blush. And in damning diversity of opinion as leading to the blood of murderous violence, our president miraculously elevates lunatic monsters into political activists—conscientious objectors to the American Way of Life.

Incredibly, at just this very instant Clinton was pridefully boasting that his own hateful, anti-American anger in a previous life had been sanctified by the ebb of history: Robert McNamara belatedly admitted that the Vietnam War was a bad idea. (No kidding, Bob?) The president believes his protestations against Our Government, vehement and sufficiently heartfelt to motor him across two continents, and steer him clear of a third, were patriotic. Aid and comfort to an enemy killing American boys, according to the people running the Pentagon then. The man running the Pentagon today bravely condemns those who, in their own nonviolent ways, choose to consider the government their enemy.

That irony isn't funny, is it Bill? It's so hurtful. Let me tell you about the view from here. I stumbled into college just a few semesters after you and your buds turned America's campuses into Animal Houses with Che posters. The Establishment sucked, police were The Pig, and "Kill your Parents" was the mildly provocative initiation advice to The Movement. When you took issue with a sitting president's foreign policy you were expressive yet poetic: "Hey, Hey LBJ, How Many Kids Did You Kill Today?" "Up Against the Wall, Motherfucker," was the most popular button on campus and an expression which popped up regularly in lecture.

By now, all that rage has been chewed up and thoroughly digested by the capitalist culture. Hollywood blockbusters make millions for investors with plotlines showing how The System killed JFK, and how The Man is best challenged by a cult hero whose tidiest advice to young people is, "By Any Means Necessary." And if you hurry, you might catch the next showing of *Panther* down at the 12-screen Cineplex.

The outrage we get today appears tired and manufactured; used rage, not the fresh stuff we got in the '60s. But the outrage was always overrated. What is really missing today is the humor. The civil rights era was ushered in with a belly laugh, as Lenny Bruce, Dick Gregory, and Mort Sahl attacked the racial double standards of an America which didn't want to face up to its hypocrisy, but which couldn't keep itself from doubling over for the punchline. When racism became ridiculous—because it was savagely and appropriately mocked—it finally crumbled. Bull Connor, once feared, became pathetic. His day was done.

Lenny is dead and Dick runs a fat farm. Mort is still very funny, but he is no longer a liberal, having supported Ronald Reagan for president in 1980. Indeed, the liberals are now the ridiculous ones. Power, after all, ridiculizes, and absolute power ridiculizes ridiculously.

And as always, instead of engaging in the rough and tumble of social debate, the politically challenged are wont to condemn all their political opponents as duped by a small cabal of evil men. Just as the reactionary Old Guard in the '50s dismissed any who dissented as fellow travelers, the Clintonites denounce those who disagree as stooges of talk radio. Their foes are not principled, but "angry white males," and their opposition is not grounded in legitimate political differences but "mean-spiritedness."

As an undergraduate, the most popular bumper sticker I can recall is the one that read, "Impeach the Cox Sacker." We thought it was quite clever, and expressed a fairly ubiquitous collegiate disdain for Our President. Was it mean? Patently offensive? Insensitive to the feelings of Pat and Tricky Dick? Screw 'em! Making fun of the powers that be was very funny then. A little birdie tells me that even a young Bill Clinton was laughing. The rest of us still are. ®

Contributing Editor Thomas W. Hazlett teaches economics and public policy at the University of California at Davis.

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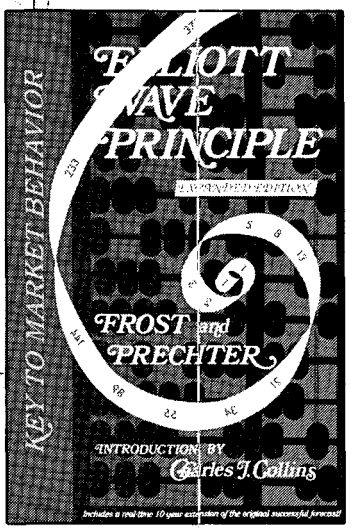

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